

PLEASE COMPLETE THIS INFORMATION.

RECORDING REQUESTED BY:

Roseman & Associates APC

AND WHEN RECORDED MAIL TO:

Roseman & Associates, ATTN: Sean Allen

15250 Ventura Blvd., Suite 1002

Sherman Oaks, CA 91403

**2016026351**

Tommy Gong  
San Luis Obispo - County Clerk-Recorder  
06/08/2016 08:14 AM

**CONFORMED COPY**

Copy of document recorded.  
Has not been compared with original.

SPACE ABOVE FOR RECORDER'S USE ONLY

AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

**AMENDED AND RESTATED  
DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
TRACT 672  
OAK PARK LEISURE GARDENS HOME OWNERS ASSOCIATION**

**If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.**

**AMENDED AND RESTATED  
DECLARATION OF CONDITIONS, COVENANTS,  
AND RESTRICTIONS  
FOR  
Tract 672**

That certain Declaration of Conditions, Covenants and Restrictions for Tract 672 recorded on June 5, 1979 as Document No. 24813 in the Official Records of San Luis Obispo County, California (the, "Original Declaration"), which were executed by Oak Park Leisure Gardens, a California Partnership (hereafter, the "Declarant"), is amended, consolidated, and restated in its entirety to read as follows:

**RECITALS**

A. Declarant was the Owner of that certain real property (hereafter, the "Development") located in the City of Arroyo Grande, County of San Luis Obispo, and State of California, which is more particularly described as follows:

Portions of Tract No. 672 as shown on Map recorded on September 1, 1979, in Book 9, Page 73 of Maps in the Office of the County Recorder of San Luis Obispo County, which are shown as Unit A on Exhibit B which is attached hereto and made a part hereof and shall sometimes herein be referred to a "Unit A".

Being a residential planned unit development project located on James Way in Arroyo Grande, California, and commonly known of as Oak Park Leisure Gardens.

B. Declarant conveyed the real property and improvements comprising the Development, subject to certain easements, protective covenants, conditions, restrictions, reservations, liens, and charges as set forth in the Original Declaration referred to above, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the real property and improvements comprising the Development and all of which shall run with the real property comprising the Development and be binding on all parties having or acquiring any right, title, or interest in such real property, or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each Owner thereof.

C. It was the further intention of the Declarant to sell and convey residential Lots improved by Residences originally constructed by Declarant to the Owners, subject to the protective covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges, and equitable servitudes between Declarant and such Owners that are set forth in this Declaration and that are intended to be in furtherance of a general plan for the subdivision, development, sale, and use of the real property comprising the Development as a "planned development" as that term is defined in Civil Code §4175. Finally, it was the intention of Declarant that the "Common Areas" and "Common Facilities," as defined below, be owned and maintained by the Association, but reserved exclusively for the use and enjoyment of the Members, their tenants, lessees, guests, and invitees, all subject to the

covenants, restrictions, terms, and conditions of this Declaration and the other Governing Documents of the Association.

D. On May 16, 2016, having failed to achieve the approval of at least sixty-six and two-thirds percent (66-2/3%) of the voting power of Members of the Association, but having obtained more than a majority vote in favor of the amendments, the Association brought a petition in the Superior Court of the County of San Luis Obispo pursuant to California Civil Code § 4275 to reduce the required voting percentage and approve this amended Declaration. The petition, filed on February 11, 2016, as case number 16CV-0071, was heard, granted, and an order entered approving the same on May 16, 2016. A true and correct copy of the Court's order is recorded herewith and incorporated herein. The action to amend and restate the Original Declaration as set forth herein, and the fact that the requisite percentage of affirmative votes required was achieved pursuant to the Court's order, is attested by the execution of this Amended and Restated Declaration by duly authorized officers of the Association, as required by Civil Code §4270(a). As so amended and restated, the easements, covenants, restrictions, and conditions set forth herein shall constitute equitable servitudes and covenants that run with the land comprising the Development and shall be binding on all parties having or acquiring any right, title, or interest in the Development or any portion thereof, and shall inure to the benefit of each Owner thereof.

## DEFINITIONS

**Section 1.01** "Architectural Committee" or "Committee" means the committee created in accordance with Article V, below.

**Section 1.02** "Articles" means the Articles of Incorporation of the Association, which are filed in the Office of the California Secretary of State, as such Articles, may be amended from time to time.

**Section 1.03** "Assessment" means any Regular, Special, or Special Individual Assessment made or assessed by the Association against an Owner and his or her Lot in accordance with the provisions of Article IV, below.

**Section 1.04** "Association" means Oak Park Leisure Gardens Home Owners Association, a California nonprofit mutual benefit corporation, its successors and assigns. The Association is an "association" as defined in Civil Code §4080. The Association was incorporated on June 8, 1979.

**Section 1.05** "Association Rules" means the rules, regulations, and policies adopted by the Board of Directors, under Section 3.07, as the same may be in effect from time to time. Without limiting the foregoing, the Association Rules shall also include any Architectural Rules adopted under Section 5.05, and any rules relating to Association disciplinary procedures adopted under Section 13.6(d) (v).

**Section 1.06** "Board of Directors" or "Board" means the Board of Directors of the Association.

**Section 1.07** "Bylaws" means the Bylaws of the Association; as such Bylaws may be amended from time to time.

**Section 1.08** “Common Area” means all real property owned by the Association for the common use and enjoyment of the Owners, including such portion of Letter Lots A through K, inclusive and the private drives as delineated in map recorded September 1, 1978 in Book 9, Page 73 of Maps in the County of San Luis Obispo, California that lie within Unit A of Tract 672. Unless the context clearly indicates a contrary intent, any reference herein to the “Common Areas” shall also include any Common Facilities located thereon.

**Section 1.09** “Common Expense” means any use of Association funds authorized by Article IV, below, and Article XII of the Bylaws and includes, without limitation: (a) All expenses or charges incurred by or on behalf of the Association for the management, maintenance, administration, insurance, operation, repairs, additions, alterations, or reconstruction of the Common Area, Common Facilities, and any portions of the Lots that the Association is obligated to maintain or repair; (b) all expenses or charges reasonably incurred to procure insurance for the protection of the Association and its Board of Directors to the extent required by Article X; (c) any amounts reasonably necessary for reserves for maintenance, repair, and replacement of the Common Areas and Common Facilities and any portions of the Lots that the Association is obligated to maintain or replace, and for nonpayment of any Assessments; and (d) the use of such funds to defray the costs and expenses incurred by the Association in the performance of its functions or in the proper discharge of the responsibilities of the Board as provided in the Governing Documents.

**Section 1.10** “Common Facilities” means the clubhouse building including each interior room contained therein; the trees, hedges, plantings, lawns, shrubs, landscaping, utilities, pipes, lines, lighting fixtures, driveways and guest parking spaces, common concrete walk ways, private roads and other facilities constructed or installed, or to be constructed or installed, or currently located within the Common Area and owned by the Association.

**Section 1.11** “County” means the County of San Luis Obispo, State of California, and its various departments, divisions, employees, and representatives.

**Section 1.12** “Declarant” means the original developer of the Development; namely, Oak Park Leisure Gardens, a California Partnership.

**Section 1.13** “Declaration” means this instrument, as it may be amended from time to time. The “Original Declaration” means and refers to the Declaration of Conditions, Covenants and Restrictions for Tract 672 recorded on June 5, 1979 as Document No. 24813 in the Official Records of San Luis Obispo County, California, together with all amendments and annexations thereto adopted before adoption of this Declaration.

**Section 1.14** “Development” means all parcels of real property (Common Area and Lots) as described in Recital “A” above and other Improvements now located or hereafter constructed or installed thereon, and all appurtenances thereto. At times herein the Development is referred to by its common name, which is Oak Park Leisure Gardens.

**Section 1.15** “Governing Documents” is a collective term that means and refers to this Declaration and to the Articles, the Bylaws, and the Association Rules and Policies, including, without limitation, the Architectural Rules.

**Section 1.16** “Improvement” means the construction, installation, alteration, or remodeling of any residences, changes in previously approved exterior color schemes or roofing materials for residences and other structural improvements, garages, outbuildings, walls, retaining walls, skylights, enclosed patio areas, balconies, landscaping (including trees), landscape structures, solar heating equipment, satellite dishes, antennas, poles, utility lines, fences or any other structure of any kind, whether permanent or temporary. In no event shall the term “Improvement” be interpreted to include improvement projects that are restricted entirely to the interior of any Residence.

**Section 1.17** “Lot” means any parcel of real property designated by a number on the Subdivision Map, excluding the Common Area. When appropriate within the context of this Declaration, the term “Lot” shall also include the Residence and other Improvements constructed or to be constructed on a Lot.

**Section 1.18** “Majority of a Quorum” means the vote of a majority of the votes cast at a meeting or by written ballot when the number of Members attending the meeting in person or by proxy or casting written ballots equals or exceeds the minimum quorum requirement for Member action, as specified in the Bylaws of the Association or by statute.

**Section 1.19** “Member” means every person or entity who holds a membership in the Association and whose rights as a Member are not suspended under Section 13.06.

**Section 1.20** “Mortgage” means any security device encumbering all or any portion of the Development, including any deed of trust. “Mortgagee” shall refer to a beneficiary under a deed of trust as well as to a mortgagee in the conventional sense.

**Section 1.21** “Owner” means any person, firm, corporation, or other entity that owns a fee simple interest in any Lot. Except where the context otherwise requires, the term “Owner” shall include the family, guests, tenants, and invitees of an Owner.

**Section 1.22** “Owner of Record” includes an Owner and means any person, firm, corporation or other entity in which title to a Lot is vested as shown by the Official Records of the Office of the County Recorder. If a Lot is transferred or conveyed to a trust, the Owner is the trustee or the co-trustees of such trust.

**Section 1.23** “Party Wall” means any wall or roof located on a property line dividing any Lots, which improvement is commonly used by any such Lot and the adjoining Lot. The rights and responsibilities of Owners with respect to Party Walls shall be governed by Article VII, Section 7.05 and Article IX, Section 9.05.

**Section 1.24** “Record” means, with respect to any document, the recordation or filing of such document in the Office of the San Luis Obispo County Recorder.

**Section 1.25** “Regular Assessment” means an Assessment levied against an Owner and his or her Lot in accordance with Section 4.02.

**Section 1.26** “Reserves” means those Common Expenses for which Association funds are set aside under Article IV of this Declaration and Civil Code §5550 for funding the

periodic painting, maintenance, repair, and replacement of the major components of the Common Areas that would not reasonably be expected to recur on an annual or less frequent basis. The amounts required to properly fund Reserves shall be determined annually by the Board in accordance with the standards prescribed by maintenance cost guidelines prepared in accordance with Civil Code §§5300 and 5310(a) (7) and prudent property management practices generally applied in “common interest developments” [as that term is defined in Civil Code §4100] in the geographic region in which the Development is located.

**Section 1.27** “Residence” means a private, single-family dwelling constructed or to be constructed on a Lot, including the attached garage and enclosed patio areas.

**Section 1.28** “Single-Family Residential Use” means occupancy and use of a Residence for single family dwelling purposes in conformity with this Declaration and the requirements imposed by applicable zoning or other applicable laws or governmental regulations limiting the number of persons who may occupy single-family residential dwellings.

**Section 1.29** “Special Assessment” means an Assessment levied against an Owner and his or her Lot in accordance with Section 4.03.

**Section 1.30** “Special Individual Assessment” means an Assessment levied under Section 4.04 against an Owner and his or her Lot [to the extent that a Special Individual Assessment may become a lien under Section 4.10(b) (ix)].

**Section 1.31** “Subdivision Map” means the final subdivision map for Tract No. 672, recorded on September 1, 1979, in Book 9, Page 73 of Maps in the Office of the County Recorder of San Luis Obispo County, which are shown as Unit A on Exhibit B which is attached hereto and made a part hereof and shall sometimes herein be referred to a “Unit A”.

**Section 1.32** “Voting Power” means those Members who are eligible to vote for the election of directors or with respect to any other matter, issue, or proposal properly presented to the Members for approval at any time a determination of voting rights is made. To be part of the Voting Power, a Member must be in good standing, as defined in the Bylaws or the Association Rules.

## **ARTICLE II PROPERTY RIGHTS AND OBLIGATIONS OF OWNERS**

### **Section 2.01**     Declaration Regarding Common Plan for the Development.

(a)     Declarant’s Intent in Subjecting the Property Comprising the Development to this Declaration. It was the intention of the Declarant that the real property and Improvements comprising the Development are to be held, conveyed, divided, encumbered, hypothecated, leased, rented, used, occupied, and improved only in compliance with and subject to the provisions of this Declaration, which is hereby declared to (i) be in furtherance of a plan for the subdivision of the Development and the sale, use, and occupancy of the Residences and Lots within the Development; (ii) be for the benefit and protection of the Development and to enhance the desirability, value, and attractiveness of the real property and Improvements contained therein; (iii) be for the benefit of the Owners and residents; (iv) run with the land and be binding

on all parties having or acquiring any right, title, or interest in any portion of the Development; (v) inure to the benefit of every portion of the Development and any interest therein; and (vi) inure to the benefit of and be binding on each Owner and the successors in interest to each Owner who acquires an interest in any portion of the Development.

(b) Binding Effect on Successors in Interest. Each conveyance, transfer, sale, assignment, lease, or sublease made by Declarant of the Common Area and of any Lot shall be deemed to incorporate by reference all of the provisions of this Declaration. All present and future Owners, tenants, and occupants of Lots and Residences in the Development shall be subject to, and shall comply with, each and every provision of the Governing Documents, as the same shall be amended from time to time, unless a particular provision of the Governing Documents is specifically restricted to one or more classes of persons (e.g., Owners, tenants, invitees). The acceptance of a deed to any Lot, the execution of a lease, sublease, or contract of sale with respect to any Lot, or the entering into occupancy of any Residence shall make the provisions of this Declaration binding on such persons and they shall thereafter be obligated to observe and comply with all Governing Documents.

**Section 2.02**      Property Rights in Common Area.

(a) Association Common Area and Facilities. Declarant conveyed certain easements to the Common Area described in section 1.08 above and the Common Facilities located thereon to the Association as shown on the Subdivision Map for Tract 672, which include the clubhouse building including each interior room contained therein; the trees, hedges, plantings, lawns, shrubs, landscaping, utilities, pipes, lines, lighting fixtures, driveways and guest parking spaces, common concrete walk ways, private roads and other facilities constructed or installed, or to be constructed or installed, or currently located within the Common Area and owned by the Association.

(b) Rights of Owners in Common Area. The interest of each Lot Owner in and to the use and benefit of the Common Area and the Common Facilities shall be appurtenant to the Lot owned by the Owner and shall not be sold, conveyed, or otherwise transferred by the Owner separately from the ownership interest in the Lot. Any sale, transfer, or conveyance of such Lot, whether by deed, gift, devise, or operation of law, shall transfer the appurtenant right to use and enjoy the Common Area and Common Facilities. There shall be no judicial partition of the Common Area or any part thereof, and each Owner, for his or her own benefit and for the benefit of all other Owners, specifically waives and abandons all rights, interest, and causes of action for a judicial partition of any ownership interest in the Common Area, and further covenants that no action for judicial partition shall be instituted, prosecuted, or reduced to judgment. The rights of all Owners in the Common Area shall be further subject to the requirements and restrictions set forth in Section 2.03 (regarding Owners' nonexclusive easements of enjoyment).

**Section 2.03**      Owners' Nonexclusive Easements of Enjoyment. Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Areas within the Development, including ingress and egress to and from his or her Lot, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to assign, rent, license, lease, charge reasonable fees for, and to otherwise designate and control the use of any unassigned parking and storage spaces, and the right to limit the number of guests of Members who may use any Common Facilities.

(b) The right of the Association to adopt Association Rules, as provided in Section 3.07, regulating the use and enjoyment of the real property, easements and improvements comprising the Development for the benefit and well-being of the Owners in common, and, in the event of the breach of such rules or any provision of any Governing Document by any Owner or tenant, to initiate disciplinary action against the violating Owner or tenant in accordance with Section 13.06. Such action may include the levying of fines and/or the temporary suspension of the voting rights and/or the right to use the Common Facilities.

(c) Subject to any restrictions set forth below, the Association's right, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and Common Facilities and, as security for any such loan, to assign or pledge the Association's right to collect payments or assessments or to enforce or foreclose a lien for the nonpayment of assessments to a financial institution or lender chartered or licensed under federal or state law, when acting within the scope of the charter or license, as security; see also Section 4.09(e).

(d) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Owners, provided, however, that no such dedication or transfer shall be effective unless an instrument, approved by at least fifty one (51) percent of the Voting Power of the Members. The instrument approving the dedication may be executed in counterparts so long as each counterpart is in recordable form.

(e) All easements affecting the Common Area that are described in Article IX.

**Section 2.04**      Delegation of Use.

(a) Delegation of Use and Leasing of Residences. Any Owner may delegate his or her rights to use and enjoy the Common Area and Common Facilities to his or her family members, tenants, lessees, or contract purchasers who reside in the Residence; provided, however, that any rental or lease may only be for residential purposes and occupancy shall be limited to no more than three (3) persons for a one bedroom Residence and no more than five (5) persons for a two bedroom Residence and for an initial term of not less than six (6) months and provided both the Owner-lessor and the prospective tenant shall execute and deliver to the Association or its agent prior to tenant's occupancy of the Residence a "Lease Addendum" supplied by the Association meeting all the requirements set forth below. The restrictions on occupancy imposed by this paragraph are intended to protect, enhance, and maintain the residential atmosphere that exists within the Development and to avoid an overburdening of Common Areas and Common Facilities.

During any period when a Residence has been rented or leased, the Owner-lessor, his or her family, guests, and invitees shall not be entitled to use and enjoy the Common Facilities of the Development, except to the extent reasonably necessary to perform the Owner's responsibilities as a lessor of the Residence; provided, however, that this restriction shall not

apply to any Owner-lessor who is contemporaneously residing in another Residence within the Development.

Any rental or lease of a Residence shall be subject to the provisions of the Governing Documents all of which shall be deemed incorporated by reference in the lease or rental agreement. Each Owner-lessor shall provide any tenant or lessee with a current copy of all Governing Documents and shall be responsible for compliance by the tenant or lessee with all of the provisions of the Governing Documents during the tenant's/lessee's occupancy and use of the Residence.

(b) Lease Addendum Requirements. The following requirements and limitations shall apply to all leases or tenancies of a Residence and shall be included in a form of Lease Addendum signed by the Owner-lessor and the tenant prior to tenant's occupation of the Residence: (i) no Residence may be leased or rented for an initial term of less than six months; (ii) the rental shall apply to not less than an entire Residence, including its appurtenant rights (except voting rights in the Association that may not be transferred to a tenant or lessee); (iii) any rental shall be evidenced by a written lease or rental agreement with attached Lease Addendum as provided herein that together shall provide that the tenancy is subject to the terms of the Governing Documents and that any failure of the tenant to comply with the terms of any Governing Document relating to residential leases, property use restrictions, or the use and enjoyment of any portion of the Common Area and Common Facilities shall constitute a default under the lease or rental agreement and shall subject the tenant to all disciplinary measures procedures thereunder; (iv) no assignments or subleases shall be allowed unless the Owner-lessor and the assignee or sublessee has signed a new Lease Addendum meeting all the requirements set forth herein; (iv) in the event the Owner-lessor becomes delinquent in the payment of assessments to the Association, the Owner-lessor agrees to an assignment of rents from his/her Lot to the Association and/or the tenant agrees to pay the Owner-lessors delinquent assessments. Failure of the Owner-lessor or the tenant to comply with the terms of the written lease or rental agreement or the Lease Addendum shall entitle the Association to terminate the tenancy on thirty (30) days written notice to the Owner-lessor and the tenant; and (v) Tenant's use of the Common Area shall not be allowed unless the signed Lease Addendum required hereunder is on file with the Association. The Owner-lessor's right to terminate a lease or rental agreement on account of the tenant's violation of the Governing Documents shall in no way restrict the right of the Association or any Owner to enforce the Governing Documents in accordance with Article XIII when the Owner's tenant is violating the Governing Documents.

(c) Discipline of Lessees. Subject to subparagraph (d), below, if any tenant or lessee fails to honor the provisions of any Governing Document, the Association shall be entitled to take such corrective action as it deems necessary or appropriate under the circumstances to preserve the quiet enjoyment of other Owners and residents of the Development. Without limitation, the Association's actions in response to a tenant's violation of the Governing Documents may include the right to terminate the tenancy after notice to the Owner-lessor and tenant as provided above and/or the imposition of fines and penalties against the Owner-lessor and/or the tenant of the Residence.

(d) Due Process Requirements for Disciplinary Action. Except for circumstances in which immediate corrective action is necessary to prevent damage or destruction to any portion

of the Development or to preserve the rights of quiet enjoyment of other Owners, the Association shall have no right to initiate disciplinary action against an Owner-lessor or the Owner's lessee or tenant on account of the misconduct of the Owner's lessee or tenant unless and until the following conditions have been satisfied: (i) the Owner and tenant have received written notice from the Board, the Association's property manager, or an authorized committee of the Board detailing the nature of the lessee's/tenant's alleged infraction or misconduct and advising the Owner and tenant of their respective right to a hearing on the matter if they believe that remedial or disciplinary action is unwarranted or unnecessary; (ii) the Owner and tenant have been given a reasonable opportunity to take corrective action on a voluntary basis or to appear at a hearing, if one is requested by the Owner or tenant; and (iii) the Owner and tenant have failed to prevent or correct the tenant's objectionable actions or misconduct. Any hearing requested under this subparagraph shall be conducted in accordance with Section 13.06.

**Section 2.05**      Obligations of Owners. Owners of Lots within the Development shall be subject to the following:

(a)      Owner's Duty to Notify Association of Tenants and Contract Purchasers. Each Owner shall notify the secretary of the Association or the Association's property manager, if any, of the names of any contract purchaser or tenant residing in the Owner's Lot. Each Owner, contract purchaser, or tenant shall also notify the secretary of the Association of the names of all persons to whom such Owner, contract purchaser, or tenant has delegated any rights to use and enjoy the Common Area of the Development and the relationship that each such person bears to the Owner, contract purchaser, or tenant. The Association shall require such Owner, contract purchaser or tenant to acknowledge in writing that their occupancy is subject to the terms of the Governing Documents and that any failure to comply with the terms of any Governing Document relating to the property use restrictions, or the use and enjoyment of any portion of the Common Area and Common Facilities shall constitute a default under the lease or rental agreement and shall entitle the Owner to terminate the tenancy.

(b)      Contract Purchasers. A contract seller of a Lot must delegate the seller's voting rights as a Member of the Association and the seller's right to use and enjoy the Common Area and Common Facilities to any contract purchaser in possession of the Lot. Notwithstanding the foregoing, the contract seller shall remain liable for any default in the payment of Assessments by the contract purchaser until title to the Lot sold has been transferred to the purchaser.

(c)      Notification to Prospective Purchasers.

(i)      As more particularly provided in California Civil Code §4525, as soon as practicable before transfer of title or the execution of a real property sales contract with respect to any Lot, the Owner thereof must give the prospective purchaser:

(A)      A copy of the Governing Documents;

(B)      A copy of the most recent documents distributed by the Association under California Civil Code §5300 et seq. (see Article XIII of the Bylaws);

(C)      A true statement in writing from an authorized representative of the Association (delinquency statement) as to (1) the amount of the Association's current regular

and special assessments and fees; and (2) the amount of any assessments levied on the Owner's Lot that remain unpaid as of the date of the delinquency statement and any monetary fines or penalties levied on the Owner's Lot and unpaid as of the date of the delinquency statement. The delinquency statement shall also include true information on late charges, interest, and costs of collection that, as of the date of the delinquency statement, are or may become a lien against the Owner's Lot under Civil Code §5650-5685;

(D) A copy or a summary of any notice previously sent to the Owner under Civil Code §5855 that sets forth any alleged violations of the Governing Documents that remain unresolved at the time of the request; and

(E) A statement disclosing any change in the Association's current Regular and Special Assessments and fees that have been approved by the Board but have not become due and payable as of the date the information is provided.

(ii) Within ten (10) days of the mailing or delivery of a request for the information described in subparagraph (c) (i), above, the Association shall provide the Owner with copies of the requested items. The Association shall be entitled to impose a fee for providing the requested items equal to (but not more than) the reasonable cost of preparing and reproducing the requested items.

(iii) The provisions of this Section, except for those relating to the furnishing of a delinquency statement, shall not apply to any Owner who is subject to the requirements of California Business and Professions Code §11018.1 (which requires certain sellers to provide prospective purchasers with a California Department of Real Estate Public Report in connection with the sale of a Lot).

(d) Payment of Assessments and Compliance with Rules. Each Owner shall pay, when due, each Regular, Special and Special Individual Assessment levied against the Owner and his or her Lot and shall observe, comply with, and abide by any and all rules and regulations set forth in, or promulgated by the Association under, any Governing Document for the purpose of protecting the interests of all Owners or protecting the Common Area and Common Facilities.

(e) Discharge of Assessment Liens. Each Owner shall promptly discharge any Assessment lien that may hereafter become a charge against his or her Lot.

(f) Joint Ownership of Lots. In the event of joint ownership of any Lot, the obligations and liabilities of the multiple Owners under the Governing Documents shall be joint and several. Without limiting the foregoing, this subparagraph (f) shall apply to all obligations, duties and responsibilities of Owners as set forth in this Declaration, including, without limitation, the payment of all Assessments.

### **ARTICLE III HOMEOWNERS ASSOCIATION**

**Section 3.01** Association Membership. Every Owner of a Lot shall be a Member of the Association. Each Owner shall hold one membership in the Association for each Lot owned and the membership shall be appurtenant to such Lot. Sole or joint ownership of a Lot shall be

the sole qualification for membership in the Association. Each Owner shall remain a Member until his or her ownership in all Lots in the Development ceases, at which time his or her membership in the Association shall automatically cease. Persons or entities who hold an interest in a Lot merely as security for performance of an obligation are not Members until such time as the security holder comes into title to the Lot through foreclosure or receipt of a deed in lieu thereof.

**Section 3.02**      One Class of Membership. The Association shall have one class of membership and the rights, duties, obligations, and privileges of the Members shall be as set forth in the Governing Documents.

**Section 3.03**      Voting Rights of Members. Each Member shall be entitled to one vote for each Lot owned by that Member. When more than one person holds an interest in any Lot, all such persons shall be Members; although in no event shall more than one vote be cast with respect to any Lot. Voting rights may be temporarily suspended under those circumstances described in Section 13.06.

**Section 3.04**      Assessments. The Association shall have the power to establish, fix, and levy Assessments against the Owners of Lots within the Development and to enforce payment of such Assessments in accordance with Article IV. Any Assessment levied by the Association against its Members shall be levied in accordance with and under the provisions of this Declaration (see, particularly, Section 4.10).

**Section 3.05**      Transfer of Memberships. Membership in the Association shall not be transferred, encumbered, pledged or alienated in any way, except on the sale of the Lot to which it is appurtenant and then, only to the purchaser. In the case of a sale, the membership appurtenant to the transferred Lot shall pass automatically to the purchaser on Recording of a deed evidencing the transfer of title. In the case of an encumbrance of such Lot, a Mortgagee does not have membership rights until he or she becomes an Owner by foreclosure or deed in lieu thereof. Tenants, who are delegated rights of use under Section 2.04, do not thereby become Members, although the tenant and his or her family and guests shall, at all times, be subject to the provisions of all Governing Documents.

**Section 3.06**      Powers and Authority of the Association.

(a)      Powers, Generally. The Association shall have the responsibility of owning, managing, and maintaining the Common Areas and Common Facilities and discharging the other duties and responsibilities imposed on the Association by the Governing Documents. In the discharge of such responsibilities and duties, the Association shall have all of the powers of a nonprofit mutual benefit corporation organized under the laws of the State of California in the ownership and management of its Development and the discharge of its responsibilities hereunder for the benefit of its Members, subject only to such limitations on the exercise of such powers as are expressly set forth in the Governing Documents. The Association and its Board of Directors shall have the power to do any and all lawful things that may be authorized, required, or permitted to be done under and by virtue of the Governing Documents, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association for the peace, health, comfort, safety, or general welfare of the

Owners. The specific powers of the Association and the limitations thereon shall be as set forth in Article IX of the Bylaws.

(b) Association's Limited Right of Entry.

(i) Right of Entry, Generally. Without limiting the foregoing description of powers, but in addition thereto, the Association and its agents shall have the right and power to enter any Lot to perform the Association's obligations under this Declaration, including:

(A) Exterior painting, replacing the roofs, maintaining the common irrigation lines and any other Association obligations with respect to individual Residences and Lots set forth herein;

(B) Obligations to enforce the architectural and land use restrictions of Articles V and VI;

(C) Any obligations with respect to construction, maintenance and repair of adjacent Common Facilities; or

(D) To make necessary repairs or maintenance that an Owner has failed to perform that, if left undone, will pose a threat to, or cause an unreasonable interference with, any portion of the Development or the Owners in common.

(ii) Limitations on Exercise of Right. The Association's right of entry under this subparagraph (b) shall be subject to the following limitations:

(A) The right of entry may be exercised immediately and without prior notice to the Owner or resident in case of an emergency originating in or threatening the Lot when entry is required onto any adjoining Lots or Common Area. The Association's work may be performed under such circumstances whether or not the Owner or resident is present.

(B) In all nonemergency situations involving routine repair and/or maintenance activities, the Association, or its agents, shall furnish the Owner or resident with at least forty eight (48) hours prior written notice of its intent to enter the Lot, specifying the purpose and scheduled time of such entry, and shall make every reasonable effort to perform its work and schedule its entry in a manner that respects the privacy of the persons residing on the Lot.

(C) In all nonemergency situations involving access by the Association for purposes of enforcing the Governing Documents against an Owner in default, the Association's entry shall be subject to observance of the notice and hearing requirements imposed by Section 13.06.

(D) In no event shall the Association's right of entry hereunder be construed to permit the Association or its agents to enter any Residence without the Owner's or the resident's express permission.

**Section 3.07**      Association Rules.

(a)      Rule Making Power. The Board may, from time to time and subject to the provisions of this Declaration, propose, enact, and amend rules and regulations of general application to the Owners (Association Rules). The Association Rules may concern, but need not be limited to (i) matters pertaining to the maintenance, repair, management, and use of the Common Area and Common Facilities by Owners, their tenants, guests, and invitees, or any other person(s) who have rights of use and enjoyment of such Common Area and Common Facilities; (ii) architectural control and the rules of the Architectural Committee under Section 5.05; (iii) the conduct of disciplinary proceedings in accordance with Section 13.06; (iv) regulation of parking, pet ownership, signs, and other matters subject to regulation and restriction under Article VIII; (v) collection and disposal of refuse; or (vi) minimum standards for the maintenance of landscaping or other Improvements on any Lot in accordance with Articles VI and VII; (viii) collection of delinquent Assessments; and (ix) any other subject or matter within the jurisdiction of the Association as provided in the Governing Documents.

Notwithstanding the foregoing grant of authority, the Association Rules shall not be inconsistent with or materially alter any provision of the other Governing Documents or the rights, preferences, and privileges of Members thereunder. In the event of any material conflict between any Association Rule and any provision of another Governing Document, the conflicting provisions contained in the other Governing Document shall prevail. All Association Rules shall be adopted, amended, and repealed (as the case may be) in good faith and in substantial compliance with this Declaration and California Civil Code §§4340-4370.

(b)      Distribution of Rules. A copy of the Association Rules, as they may from time to time be adopted, amended, or repealed, shall be mailed or otherwise delivered to each Owner. A copy of the Association Rules shall also be available and open for inspection during normal business hours at the principal office of the Association.

(c)      Adoption and Amendment of Rules.

(i)      Requirement of Prior Notice to Members of Certain Operating Rules or Rule Changes. For purposes of this subparagraph (c), an “Operating Rule” is an Association Rule or regulation that applies generally to the management and operation of the Development or to the conduct of the business and affairs of the Association, and a “Rule Change” is any adoption, amendment, or repeal of an Operating Rule by the Board (see California Civil Code §4340). The Board must provide to the Members written notice of a proposed Rule Change at least thirty (30) days before taking action to implement the Rule Change. The notice must include the text of the proposed Rule Change and a description of the purpose and effect of the proposed change. This requirement of prior notice to the Members applies only to Operating Rules that relate to one or more of the following subjects:

- (A)      Use of the Association Common Areas of the Development;
- (B)      Use of any Lot in the Development (including the adoption of Architectural Rules);

- (C) Member discipline, including any schedule of monetary penalties for violation of the Governing Documents and any procedure for the imposition of penalties;
- (D) Any standards for delinquent assessment payment plans;
- (E) Any procedures adopted by the Association for resolution of assessment disputes; and
- (F) Any procedures for reviewing and approving or disapproving a proposed physical change to a Member's Lot or to the Common Area under Article V.

Prior notice to Members is not required for the following actions of the Board, regardless of whether those actions may be construed as being Association Rules or Operating Rules, as defined in the Civil Code: (i) any Rule Change that the Board adopts to address an imminent threat to public health or safety or imminent risk of substantial economic loss to the Association [such "emergency rules" may be adopted and remain in effect for up to one hundred twenty (120) days]; (ii) decisions regarding maintenance of the Common Areas or Common Facilities; (iii) a decision on a specific matter that is not intended to apply to all Members, generally; (iv) establishing the amount of an assessment; (v) adoption of a Rule Change that is required by law (if the Board has no discretion regarding the substantive effect of the Rule Change); and (vi) issuance of a document that merely repeats existing law or the Governing Documents.

(ii) Members' Right to Challenge Proposed Rule Changes. With respect solely to Operating Rules and Rule Changes listed in subparagraphs (A) through (F) of paragraph (c)(i), Members owning five (5) percent or more of the Lots in the Development have the right to demand that a special meeting of the Members be called to reverse a proposed Rule Change, so long as the request for the special meeting is delivered to the Association within thirty (30) days after the Members are given notice of the Rule Change (see California Civil Code §4365). If a proper and timely demand for a special meeting to vote to rescind an Operating Rule or Rule Change is tendered to the Association, the Board shall establish the date, time, and location of the meeting and provide notice thereof to the Members in accordance with Corporations Code §7511(c).

So long as a Quorum of the Members is present at any such meeting, the Rule Change can be reversed on the affirmative vote of a Majority of a Quorum of the Members, with each Member having one vote on the matter for each Lot owned. If the Members vote to reverse an Operating rule or a Rule Change, the Board may not take action to readopt the Operating Rule or Rule Change for a period of one (1) year after the date of the special meeting when reversal of the Operating Rule or Rule Change was approved, provided, however, that this provision is not intended to preclude the Board from adopting a different Operating Rule or Rule Change on the same subject as the Rule Change that was successfully reversed. As soon as possible following the close of voting on any proposal to reverse an Operating Rule or Rule Change, but not more than fifteen (15) days after the close of voting, the Board shall provide notice to each Member of the results of the Member vote by personal delivery or first-class mail.

(iii) Minimum Content for Election Rules. Civil Code §5100-5145 requires associations to adopt rules regarding the conduct of elections that do all of the following:

(A) Ensure that any candidate or Member advocating a point of view is provided access to Association media, newsletters, or Internet Websites during a campaign. So long as the access is reasonably related to that election, equal access shall be provided to all candidates and Members advocating a point of view (whether or not endorsed by the Board). The Association may not edit or redact any content from these campaign communications, but may include a statement specifying that the candidate or Member, and not the Association, is responsible for that content.

(B) Ensure access to the Common Area meeting space, if any exists, during a campaign, at no cost, to all candidates, including those who are not incumbents, and to all Members advocating a point of view (whether or not endorsed by the Board), so long as use of the space is for a purpose that is reasonably related to the election.

(C) Specify the qualifications for candidates for election to the Board of Directors and any other elected position, and procedures for the nomination of candidates. A nomination or election procedure shall not be deemed reasonable if it disallows any Member of the Association from nominating himself or herself for election to the Board.

(D) Specify the qualifications for voting, the Voting Power of each membership, the authenticity, validity, and effect of proxies, and the voting period for elections, including the times at which polls will open and close.

(E) Specify a method of selecting one (1) or three (3) inspectors of election by the Board of Directors.

(F) Allow the inspector(s) to appoint and oversee additional persons to verify signatures and to count and tabulate votes as the inspector(s) deem appropriate, provided that the persons are independent third parties.

(iv) Adoption of Other Association Rules. Except as provided in subparagraph (c)(i), above, with respect to certain Rule Changes that are subject to the prior notice and challenge provisions of Civil Code §§4340-4370, any other Association Rules may be adopted or amended from time to time by majority vote of the Board; provided, however, that the Board shall not adopt any Association Rule or amendment thereto until at least thirty (30) days after the proposed rule amendment has been distributed in writing to each Member, along with a description of the purpose and effect of the proposed Association Rule or amendment thereto. The notice describing the proposed rule or amendment shall also set forth the date, time, and location of the Board meeting at which action on the proposal is scheduled to be taken. Any duly adopted rule or amendment to the Association Rules shall become effective immediately following the date of adoption thereof by the Board, or at such later date as the Board may deem appropriate. Any duly adopted rule or rule amendment shall be distributed to the Owners by mail or personal delivery.

**Section 3.08**      Breach of Rules or Restrictions. Any breach of the Association Rules, the Design Guidelines, or of any other Governing Document provision shall give rise to the rights and remedies set forth in Article XIII.

**Section 3.09**      Limitation on Liability of the Association's Directors and Officers.

(a)      Claims Regarding Breach of Duty. No director or officer of the Association (collectively and individually referred to as the Released Party) shall be personally liable to any of the Members or to any other person, for any error or omission in the discharge of his or her duties and responsibilities or for his or her failure to provide any service required under the Governing Documents; provided that such Released Party has, on the basis of such information as he or she possessed, acted in good faith, in a manner that such person believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Without limiting the generality of the foregoing, this standard of care and limitation of liability shall extend to such matters as the establishment of the Association's annual financial budget, the funding of Association capital replacement and reserve accounts, repair and maintenance of Common Areas and Common Facilities and enforcement of the Governing Documents.

(b)      Other Claims Involving Tortious Acts and Property Damage. No person who suffers bodily injury (including, without limitation, emotional distress or wrongful death) as a result of the tortious act or omission of a volunteer Member of the Board or volunteer officer of the Association, shall recover damages from such Board Member or officer if all of the following conditions are satisfied:

- (i)      The act or omission was performed within the scope of the volunteer Board Member's or officer's Association duties;
- (ii)      The act or omission was performed in good faith;
- (iii)      The act or omission was not willful, wanton, or grossly negligent; and
- (iv)      The Association maintained and had in effect at the time the act or omission occurred and at the time a claim is made general liability insurance and directors' and officers' liability insurance for negligent acts in their capacities as such, with coverage of at least one million dollars (\$1,000,000).

The payment of actual expenses incurred by a Board Member or officer in the execution of such person's Association duties shall not affect such person's status as a volunteer Board member or officer for the purposes of this section. The provisions of this subparagraph (b) are intended to reflect the protections accorded to volunteer directors and officers of community associations under Civil Code §5800. If that Civil Code section is amended or superseded by another similar provision of the California statutes, this subparagraph (b) shall be deemed amended, without the necessity of further Member approval, to correspond to the amended or successor Civil Code provision.

## **ARTICLE IV ASSESSMENTS**

### **Section 4.01      Assessments, Generally.**

(a) Covenant to Pay Assessments. Each Owner of one or more Lots, by acceptance of a deed or other conveyance therefore (whether or not it shall be so expressed in such deed or conveyance), covenants and agrees to pay to the Association (i) Regular Assessments; (ii) Special Assessments; (iii) Special Individual Assessments; and (iv) Emergency Assessments, as defined and levied under this Article IV.

(b) Extent of Owner's Personal Obligation for Assessments. All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a debt and a personal obligation of the person who is the Owner of the Lot at the time the Assessment is levied. Each Owner who acquires title to a Lot (whether by conventional conveyance, at judicial sale, trustee's sale or otherwise) shall be personally liable only for Assessments attributable to the Lot which become due and payable after the date that the person acquires title. Accordingly, when a person acquires title to a Lot, he or she shall not be personally liable for delinquent Assessments of prior Owners unless the new Owner expressly assumes the personal liability. However, if the acquired Lot is conveyed subject to a valid lien for delinquent Assessments (and related costs of collection), the Association may continue to exercise its foreclosure remedies against the Lot, regardless of the change of ownership, and/or the Association may pursue its collection remedies against the prior Owner, individually.

(c) Creation of Assessment Lien. All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a charge on the Lot and shall be a continuing lien on the Lot against which such Assessment is made from and after the time that the Association records a Notice of Delinquent Assessment in accordance with Civil Code §§5650-5690 and Section 4.10(b) (v). Any lien for unpaid Assessments created under the provisions of this Article may be subject to foreclosure as provided in Section 4.10(b) (vii).

(d) No Avoidance of Assessment Obligations. No Owner may exempt himself or herself from personal liability for Assessments duly levied by the Association, nor release the Lot or other property owned by him/her from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area or any facilities thereon or by abandonment or nonuse of his/her Lot or any other portion of the Development.

(e) Limitation on Amount of Assessments. The Association shall not impose or collect an Assessment or fee that exceeds the amount necessary to defray the costs for which the Assessment or fee is levied.

### **Section 4.02      Regular Assessments.**

(a) Preparation of Annual Budget; Establishment of Regular Assessments. Not less than thirty (30) days nor more than ninety (90) days before the beginning of the Association's fiscal year, the Board shall estimate the total amount required to fund the Association's

anticipated Common Expenses for the next succeeding fiscal year (including additions to any reserve fund established to defray the costs of future repairs, replacement, or additions to the Common Facilities or portions of the Lots that the Association is obligated to maintain) by preparing and distributing to all Members a budget satisfying the requirements of Section 12.05 of the Bylaws. If the Board fails to distribute the budget for any fiscal year within the time period specified in the first sentence of this Section, the Board shall not be permitted to increase Regular Assessments for that fiscal year unless the Board first obtains the Members' approval in accordance with Section 4.08.

(b) Establishment of Regular Assessment by Board; Membership Approval Requirements. The total annual expenses estimated in the Association's budget (less projected income from sources other than Assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year, provided, however, that, except as provided in Section 4.05 (relating to Emergency Assessments), the Board of Directors may not impose a Regular Assessment that is more than twenty (20) percent greater than the Regular Assessment for the Association's immediately preceding fiscal year without the Members' prior approval in accordance with Section 4.08.

(c) Allocation of Regular Assessment. The total estimated Common Expenses, determined in accordance with subparagraph (a), shall be allocated among, assessed against, and charged to each Owner according to the ratio of the number of Lots within the Development owned by the assessed Owner to the total number of Lots subject to Assessments so that each Lot bears an equal share of the total Regular Assessment.

(d) Assessment Roll. That portion of the estimated Common Expenses assessed against and charged to each Owner shall be set forth and recorded in an Assessment roll which shall be maintained and available with the records of the Association and shall be open for inspection at all reasonable times by each Owner or his or her authorized representative for any purpose reasonably related to the Owner's interest as a property Owner or as a Member. The Assessment roll (which may be maintained in electronic form) shall show, for each Lot, the name and address of the Owner of Record, all Regular, Special and Special Individual Assessments levied against each Owner and his or her Lot, and the amount of such Assessments which have been paid or remain unpaid. The delinquency statement required by Section 2.05(c) (i) (C) shall be conclusive on the Association and the Owner of such Lot as to the amount of such indebtedness appearing on the Association's Assessment roll as of the date of such statement, in favor of all persons who rely thereon in good faith.

(e) Mailing Notice of Assessment. Within the time requirements specified in subparagraph (a), above, the Board of Directors shall mail to each Owner, at the street address of the Owner's Lot, or at such other address as the Owner may from time to time designate in writing to the Association, a statement of the amount of the Regular Assessment for the next succeeding fiscal year.

(f) Failure to Make Estimate. If, for any reason, the Board of Directors fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made under 4.03(a)(i), for that year, shall be assessed against each Owner and his or her Lot on account of the then current

fiscal year, and installment payments (as hereinafter provided) based on such automatic Assessment shall be payable on the regular payment dates established by the Board.

(g) Installment Payment. The Regular Assessment levied against each Owner and his or her Lot shall be due and payable in advance to the Association in equal monthly installments on the first day of each month or on such other date or dates as may be established from time to time by the Board of Directors. Installments of Regular Assessments shall be delinquent if not paid within fifteen (15) days following the due date as established by the Board.

The collection of Regular Assessments in installments as hereinabove provided is for the convenience of the Association only. The total Regular Assessment is levied as of the commencement of the Association's fiscal year and in the event of a default in the payment of any installment, the Association may declare the entire balance of the Regular Assessment to be in default and pursue the remedies set forth in Section 4.10, as to the delinquency.

### **Section 4.03**      Special Assessments.

(a) Purposes for Which Special Assessments May Be Levied. Subject to the membership approval requirements set forth in subparagraph (b), below, the Board of Directors shall have the authority to levy Special Assessments against the Owners and their Lots for the following purposes:

(i) Regular Assessment Insufficient in Amount. If, at any time, the Regular Assessment for any fiscal year is insufficient in amount due to extraordinary expenses not contemplated in the budget prepared for that fiscal year, then, except as prohibited by Section 4.02(a), the Board of Directors shall levy and collect a Special Assessment, applicable to the remainder of such year only, for the purpose of defraying, in whole or in part, any deficit which the Association may incur in the performance of its duties and the discharge of its obligations hereunder.

(ii) Capital Improvements. The Board may also levy Special Assessments for additional capital Improvements within the Common Area (i.e., Improvements not in existence on the date of this Declaration that are unrelated to repairs for damage to, or destruction of, the existing Common Facilities). The Special Assessment power conferred hereunder is not intended to diminish the Board's obligation to plan and budget for normal maintenance, and replacement repair of the Common Area or existing Common Facilities through Regular Assessments (including the funding of reasonable reserves) and to maintain adequate insurance on the Common Area and existing Common Facilities in accordance with Article X.

(b) Special Assessments Requiring Membership Approval. The following Special Assessments require prior membership approval in accordance with Section 4.08: (i) any Special Assessments which, in the aggregate, exceed five (5) percent of the Association's budgeted gross expenses for the fiscal year in which the Special Assessment(s) is/are levied, and (ii) any Special Assessments imposed under subparagraph (a) (i) of this section when the Board has failed to distribute a budget to the Members within the time specified in 4.02(a). The foregoing Member approval requirements shall not apply, however, to any Special Assessment imposed to address any "emergency situation" as defined in Section 4.05.

(c) Allocation and Payment of Special Assessments. When levied by the Board or approved by the Members as provided above, the Special Assessment shall be divided among, assessed against and charged to each Owner and his or her Lot in the same manner prescribed for the allocation of Regular Assessments under Section 4.02(c). The Special Assessment so levied shall be recorded on the Association's Assessment roll and notice thereof shall be mailed to each Owner.

Special Assessments for purposes described in subparagraph (a) (i) of this section shall be due as a separate debt of the Owner and a lien against his or her Lot, and shall be payable to the Association in equal monthly installments during the remainder of the then current fiscal year. Special Assessments for purposes described in subparagraph (a) (i) shall be due as a separate debt of the Owner and a lien against his or her Lot, and shall be payable in full to the Association within thirty (30) days after the mailing of such notice or within such extended period as the Board shall determine to be appropriate under the circumstances giving rise to the Special Assessment.

**Section 4.04**      Special Individual Assessments.

(a) Circumstances Giving Rise to Special Individual Assessments. In addition to the Special Assessments levied against all Owners in accordance with Section 4.03, the Board of Directors may impose Special Individual Assessments against an Owner in any of the circumstances described in subparagraphs (i) through (iii), below; provided, however, that no Special Individual Assessments may be imposed against an Owner under this section until the Owner has been afforded the notice and hearing rights to which the Owner is entitled under Section 13.06 and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the Governing Documents. Subject to the foregoing, the facts and circumstances giving rise to liability for Special Individual Assessments include the following:

(i) Damage to Common Area or Common Facilities. In the event that any damage to, or destruction of, any portion of the Common Area or the Common Facilities is caused by the willful misconduct or negligent act or omission of any Owner, any member of his or her family, or any of his or her tenants, guests, servants, employees, licensees or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses incurred in connection therewith (to the extent not compensated by insurance proceeds) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

(ii) Expenses Incurred in Gaining Member Compliance. In the event that the Association incurs any costs or expenses to (A) accomplish the payment of delinquent Assessments; (B) perform any repair, maintenance, or replacement to any portion of the Development that the Owner is responsible to maintain under the Governing Documents but has failed to undertake or complete in a timely fashion; or (C) otherwise bring the Owner and/or his or her Lot into compliance with any provision of the Governing Documents, the amount incurred by the Association (including reasonable fines and penalties duly imposed hereunder, title company fees, accounting fees, court costs and reasonable attorneys' fees) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

(iii) Required Maintenance of Lots and Residences. If any Lot or Residence is maintained so as to become a nuisance, fire, or safety hazard for any reason, including without limitation, the accumulation of trash, junk automobiles, or improper weed or vegetation control, the Association shall have the right to enter the Lot, correct the offensive or hazardous condition and recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner. Any entry on the property of any Owner by the Association shall be affected in accordance with Section 3.06(b).

(b) Levy of Special Individual Assessment and Payment. Once a Special Individual Assessment has been levied against an Owner for any reason described, and subject to the conditions imposed in subparagraph (a) of this section, such Special Individual Assessment shall be recorded on the Association's Assessment roll and notice thereof shall be mailed to the affected Owner. The Special Individual Assessment shall thereafter be due as a separate debt of the Owner payable in full to the Association within thirty (30) days after the mailing of notice of the Assessment.

(c) Limitation on Right to Lien Lots for Special Individual Assessments. The right of the Association to collect delinquent Special Individual Assessments through the use of lien and foreclosure remedies is subject to the limitations set forth in Section 4.10(b) (ix), below. However, Special Individual Assessments may be collected by the Association through the use of other legal processes, including, without limitation, an action in small claims court.

**Section 4.05**      Assessments to Address Emergency Situations.

(a) Authority of Board to Impose Emergency Assessments. The requirement of a membership vote to approve (i) Regular Assessment increases in excess of twenty (20) percent of the previous year's Regular Assessment, or (ii) Special Assessments which, in the aggregate, exceed five (5) percent of the Association's budgeted gross expenses for the fiscal year in which the Special Assessment(s) are levied, shall not apply to Assessments necessary to address emergency situations (Emergency Assessments). For purposes of this Section, an emergency situation includes, and is limited to, any of the following:

(i) An extraordinary expense required by an order of a court.

(ii) An extraordinary expense necessary to repair or maintain the Common Areas or Common Facilities when a threat to personal safety is discovered.

(iii) An extraordinary expense necessary to repair or maintain the Common Areas or Common Facilities that could not have been reasonably foreseen by the Board in preparing and distributing the budget under Section 4.02(a) and Section 12.05 of the Bylaws, provided, however, that before the imposition or collection of an Assessment under this subparagraph iii, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The Board's resolution shall be distributed to the Members together with the notice of Assessment.

(b) Payment of Emergency Assessments. When levied by the Board, the Emergency Assessment shall be divided among, assessed against, and charged to each Owner and his or her

Lot in the same manner prescribed for the allocation of Regular Assessments under Section 4.02(c). The Emergency Assessment so levied shall be recorded on the Association's Assessment roll and notice thereof shall be mailed to each Owner. An Emergency Assessment shall be due as a separate debt of the Owner and shall be payable in full to the Association within thirty (30) days after the mailing of the notice of the Emergency Assessment or within such extended period as the Board shall determine to be appropriate under the circumstances giving rise to the Emergency Assessment. If an Emergency Assessment is not paid on or before the due date, the Assessment may be enforced in the manner provided in Section 4.10.

**Section 4.06**      Purpose and Reasonableness of Assessments. Each Assessment made in accordance with the provisions of this Declaration is hereby declared and agreed to be for use exclusively (a) to promote the health, safety, and welfare of individuals residing within the Development; (b) to promote the enjoyment and use of the Development by the Owners and their families, tenants, invitees, licensees, guests, and employees; and (c) to provide for the repair, maintenance, replacement, and protection of the Common Area and Common Facilities and those portions of the Lots that the Association is obligated to maintain. Each and every Assessment levied hereunder is further declared and agreed to be a reasonable Assessment, and to constitute a separate, distinct and personal obligation (with respect to which a separate lien may be created hereby) of the Owner of the Lot against which the Assessment is imposed that shall be binding on the Owner's heirs, successors, and assigns, provided, however, that the personal obligation of each Owner for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

**Section 4.07**      Exemption of Portions of the Development from Assessments. The following real property subject to this Declaration shall, unless devoted to the use as a residential dwelling, be exempt from the Assessments and the lien thereof provided herein:

- (a) Any portion of the Development dedicated and accepted by a local public authority;
- (b) The Common Area and Common Facilities; and
- (c) Any Lot owned by the Association unless the Lot and Residence thereon are rented by the Association to a person for residential purposes.

**Section 4.08**      Notice and Procedure for Member Approval under Articles II and III. If Member approval is required in connection with any increase or imposition of Assessments under Sections 4.02 and 4.03, the affirmative vote required to approve the increase shall be a Majority of a Quorum of the Members. The quorum required for such membership action shall be more than fifty percent (50%) of the Members of the Association as required under Civil Code §5605(c).

**Section 4.09**      Maintenance of Assessment Funds.

(a) Bank Accounts. All sums received or collected by the Association from Assessments, together with any interest or late charges thereon, shall be promptly deposited in one or more federally insured checking, savings or money market accounts in a bank or other financial institution selected by the Board of Directors. In addition, the Board shall be entitled to

make prudent investment of reserve funds in insured certificates of deposit, money market funds or similar investments consistent with the investment standards normally observed by trustees. The Board and such officers or agents of the Association as the Board shall designate shall have exclusive control of said account(s) and investments and shall be responsible to the Owners for the maintenance at all times of accurate records thereof. The withdrawal of funds from Association accounts shall be subject to the minimum signature requirements imposed by Civil Code §5510 and Section 12.02 of the Bylaws. Any interest received on deposits shall be credited proportionately to the balances of the various Assessment fund accounts maintained on the books of the Association as provided in subparagraph (b), below.

(b) Expenditure of Assessment Funds. Except as provided below, the proceeds of each Assessment shall be used only for the purpose for which such Assessment was made, and such funds shall be received and held in trust by the Association for such purpose. Notwithstanding the foregoing, the Board, in its discretion, may make appropriate adjustments among the various line items in the Board's approved general operating budget if the Board determines that it is prudent and in the best interest of the Association and its Members to make such adjustments. If the proceeds of any Special Assessment exceed the requirement of which such Assessment was levied, such surplus may, in the Board's discretion, be: (i) returned proportionately to the contributors thereof; (ii) reallocated among the Association's reserve accounts if any such account is, in the Board's opinion, underfunded; or (iii) credited proportionately on account of the Owners' future Regular Assessment obligations.

(c) Separate Accounts; Commingling of Funds. To preclude a multiplicity of bank accounts, the proceeds of all Assessments may be commingled in one or more accounts and need not be deposited in separate accounts so long as the separate accounting records described herein are maintained. For purposes of accounting, but without requiring any physical segregation of assets, the Association shall keep a separate accounting of all funds received by it in payment of each Assessment and of all disbursements made therefrom; provided, however, that receipts and disbursements of Special Assessments made under Section 4.03(a)(i), shall be accounted for together with the receipts and disbursements of Regular Assessments, and a separate accounting shall be maintained for each capital improvement for which reserve funds for replacement are required to be maintained by the Association.

Unless the Association is exempt from federal or state taxes, all sums allocated to capital replacement funds shall be accounted for as contributions to the capital of the Association and as trust funds segregated from the regular income of the Association or in any other manner authorized by law or regulations of the Internal Revenue Service and the California Franchise Tax Board that will prevent such funds from being taxed as income of the Association.

(d) Reserve Funds. The Board shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components of the Development that the Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established. However, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash-flow requirements or other expenses, provided the Board has made a written finding,

recorded in the Board's minutes, explaining the reasons that the transfer is needed, and describing when and how the money will be repaid to the reserve fund.

The transferred funds shall be restored to the reserve fund within one (1) year of the date of the initial transfer, except that the Board may, on making a finding supported by documentation that a temporary delay would be in the best interests of the Development, temporarily delay the restoration. The Board shall exercise prudent fiscal management in delaying restoration of these funds and in restoring the expended funds to the reserve account, and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limits required by this subparagraph. This Special Assessment is subject to the Member approval requirements of Civil Code §5600-5625 and Section 4.03(b), if the aggregate amount of the Special Assessment exceeds five (5) percent of the budgeted gross expenses of the Association for the year in which the Special Assessment is imposed. The Board may, at its discretion, extend the date the payment on the Special Assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid Special Assessment.

When the decision is made to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation, the Association shall notify the Members of that decision in the next available mailing to all Members under Corporations Code §5016, and of the availability of an accounting of those expenses. The Association shall make an accounting of expenses related to the litigation on at least a quarterly basis. The accounting shall be made available for inspection by Members at the Association's principal office.

(e) Limitations on Association's Authority to Assign or Pledge Assessment Obligations. The Association may not voluntarily assign or pledge its right to collect payments or Assessments, or to enforce or foreclose a lien to a third party, except when the assignment or pledge is made to a financial institution or lender chartered or licensed under federal or state law, when acting within the scope of that charter or license, as security for a loan obtained by the Association. However, the restrictions imposed by this subparagraph (e) shall not restrict the right or ability of the Association to assign to a third party for purposes of collection any unpaid obligations to a former Member.

**Section 4.10** Collection of Assessments; Enforcement of Liens. Installments of Regular Assessments shall be delinquent if not paid within fifteen (15) days of the due date as established by the Board. Special Assessments, Special Individual Assessments, and Emergency Assessments shall be delinquent if not paid within the times prescribed in Sections 4.03(c), 4.04(b) and 4.05(b), respectively. When an Assessment becomes delinquent, the amount thereof may, at the Board's election, bear interest at the maximum rate allowed by law commencing thirty (30) days after the due date until the same is paid. In addition to the accrual of interest, the Board of Directors is authorized and empowered to promulgate a schedule of reasonable late charges for any delinquent Assessments, subject to the limitations imposed by California Civil Code §§5650 and 5600 or comparable successor statutes. Once an assessment becomes delinquent, the Association may elect one or both of the following remedies:

(a) Enforcement of an Owner's Personal Obligation to Pay Assessments. The Association may bring a legal action directly against the Owner for breach of the Owner's personal obligation to pay the Assessment and in such action shall be entitled to recover the delinquent Assessment or Assessments, accompanying late charges, interest, costs, and reasonable attorneys' fees. Commencement of a legal action shall not constitute a waiver of any lien rights as described in subparagraph (b), below.

(b) Imposition and Enforcement of Assessment Lien; Limitations. Except as otherwise provided in subparagraph (b)(ix), below, with respect to the limitation on the imposition of liens for Special Individual Assessments, the Association may impose a lien against the Owner's Lot for the amount of the delinquent Assessment or Assessments, plus any reasonable costs of collection (including reasonable attorneys' fees), late charges, and interest by taking the following steps:

(i) Issuance of Delinquency Notice; Contents. At least thirty (30) days before recording a lien on the Owner's Lot to collect a delinquent Assessment, the Association shall notify the Owner in writing by certified mail of the following (the Delinquency Notice):

(A) A general description of the Association's collection and lien enforcement procedures and the method of calculating the amount; a statement that the Owner of the Lot has the right to inspect the Association records under Corporations Code §8333; and the following statement in 14-point boldface type (if printed) or in capital letters (if typed): "IMPORTANT NOTICE: IF YOUR LOT IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION."

(B) An itemized statement of the charges owed by the Owner, including items on the statement that indicate the amount of any delinquent Assessments, the fees and reasonable costs of collection, reasonable attorneys' fees, any late charges, and interest, if any.

(C) A statement that the Owner shall not be liable to pay the charges, interest, and costs of collection previously levied by the Association, if it is subsequently shown that the Assessment was paid on time.

(D) The right of the notified Owner to request a meeting with the Board as provided in subparagraph (iv), below.

(E) The right to dispute the Assessment debt by submitting a written request for dispute resolution to the Association under the Association's "meet and confer" program as required by Civil Code §5900-5920, and as provided under subparagraph (iii), below.

(F) The right of the noticed Member to request alternative dispute resolution with a neutral third party under Civil Code §5925 before the Association may initiate foreclosure against the Owner's Lot, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure, rather than a non-judicial foreclosure.

(ii) Application of Payments. Any payments made by the Lot Owner toward the delinquent Assessment shall first be applied to the Assessments that are owed at the time the payment is made, and only after the Assessments owed are paid in full shall the payments be applied to the fees and the costs of collection, attorneys' fees, late charges, or interest. When an Owner makes a payment, the Owner may request a receipt and the Association shall provide it. The receipt shall indicate the date of payment and the person who received the payment on behalf of the Association. The Association shall provide its Members with a mailing address for overnight payment of Assessments.

(iii) Pre-Lien Offer to Meet and Confer with the Owner. Before recording a lien for delinquent assessments, the Association must offer the delinquent Owner and, if so requested by the Owner, participate in dispute resolution under the Association's meet and confer program that is required by Civil Code §5900-5920, or alternative dispute resolution with a neutral third party under Civil Code §5925. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(iv) Rights of Owners to Propose Payment Plans. An Owner may also submit a written request to meet with the Board to discuss a payment plan for the delinquent assessment. This request must also be made within fifteen (15) days of the postmark of the Delinquency Notice. The Association shall provide the Owners with the standards for payment plans, if such standards have been adopted. So long as a timely request for a meeting has been tendered, the Board shall meet with the Owner in executive session within forty-five (45) days of the postmark of the request for a meeting, unless there is no regularly scheduled Board meeting within that period, in which event the Board may designate a committee of one or more Members to meet with the Owner.

(v) Association Assessment Lien Rights. Except as provided in subparagraph (ix), below (relating to Special Individual Assessments), the amount of the Assessment, plus any costs of collection, late charges, and interest assessed in accordance with Civil Code §5650 shall be a lien on the Owner's Lot from and after the time the Association causes to be recorded in the Office of the County Recorder a Notice of Delinquent Assessment, which shall state the amount of the Assessment and other sums imposed in accordance with section 1366, a legal description of the Owner's Lot against which the Assessment and other sums are levied, and the name of the record owner of the Lot against which the lien is imposed. For the lien to be imposed by nonjudicial foreclosure as provided in subparagraph (viii), below, the Notice of Delinquent Assessment shall state the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice of Delinquent Assessment shall be signed by any officer of the Association or by the person designated by the Association for that purpose and mailed in the manner set forth in Civil Code §2924b to all record owners of the Owner's Lot no later than ten (10) calendar days after Recordation.

(vi) Priority of Assessment Liens. A lien created under subparagraphs (v) or (ix) of this Section 4.10(b) shall be before all other liens recorded against the Owner's Lot after the Notice of Delinquent Assessment, except as described in Section 4.12.

(vii) Enforcement of Assessment Liens. Subject to the limitations of this Section 4.10(b), after the expiration of thirty (30) days following the recording of a Notice of Delinquent Assessment, the lien may be enforced in any manner permitted by law, including sale by the Court, sale by the trustee designated in the Notice of Delinquent Assessment, or sale by a trustee substituted under Civil Code §2934a. Any sale by the trustee shall be conducted in accordance with Civil Code §§2924, 2924b, and 2924c (applicable to the exercise of powers of sale in mortgages and deeds of trusts). The fees of a trustee may not exceed the amounts prescribed in Civil Code §§2924c and 2924d.

(viii) Obligation to Record Lien Releases. If it is determined that a lien previously recorded against a Lot was recorded in error, the party who recorded the lien, within twenty-one (21) calendar days, shall record or cause to be recorded in the Office of the County Recorder a lien release or notice of rescission and provide the Lot Owner with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission. In addition, within twenty-one (21) days of the payment of the sums specified in the Notice of Delinquent Assessment, the Association shall record or cause to be recorded in the Office of the County Recorder a lien release or notice of rescission and provide the Lot Owner a copy of the lien release or notice that the delinquent assessment has been satisfied.

(ix) Limitation on Authority to Use Lien and Foreclosure Remedies to Collect Special Individual Assessments. Only the following categories of Special Individual Assessments shall be subject to collection by the Association through the lien and foreclosure remedies described in subparagraphs (b)(v) through (b)(viii), above: (A) Special Individual Assessments or other monetary charges imposed by the Association as a means of reimbursing the Association for costs incurred in the repair of damage to Common Areas and Common Facilities for which the Member or the Member's guests or tenants were responsible, and (B) Special Individual Assessments imposed to recover late charges, reasonable costs of collection, and interest assessed in accordance with Civil Code §5650(b).

(x) Effect of Failure to Adhere to Lien Restrictions. If the Association fails to comply with the procedures set forth in this Section 4.10(b) before recording a lien, the Association shall recommence the required notice process. Any costs associated with recommencing the notice process shall be borne by the Association and not by the Lot Owner.

The provisions of this Section 4.10(b) are intended to comply with the requirements of Civil Code §5650 in effect as of January 1, 2014. If these Civil Code sections are amended or modified in the future in a way that is binding on the Association and causes this Section 4.10(b) to be in conflict with applicable law, the provisions of this Section 4.10(b) automatically shall be amended or modified in the same manner by action of the Board of Directors without necessity of approval of the amendment by the Members.

**Section 4.11** Transfer of Lot by Sale or Foreclosure. The following rules shall govern the right of the Association to enforce its Assessment collection remedies following the sale or foreclosure of a Lot:

(a) Except as provided in subparagraph (b), the sale or transfer of any Lot shall not affect any Assessment lien that has been duly Recorded against the Lot before the sale or

transfer, and the Association can continue to foreclose its lien in spite of the change in ownership.

(b) The Association's Assessment lien shall be extinguished as to all delinquent sums, late charges, interest, and costs of collection incurred before the sale or transfer of a Lot under a foreclosure or exercise of a power of sale by the holder of a prior encumbrance (but not under a deed-in-lieu of foreclosure). A "prior encumbrance" means any first Mortgage or other Mortgage or lien Recorded against the Lot at any time before Recordation of the Association's Assessment lien (see Section 4.12).

(c) No sale or transfer of a Lot as the result of foreclosure, exercise of a power of sale, or otherwise, shall relieve the new Owner of such Lot (whether it be the former beneficiary of the first Mortgage or other prior encumbrance or a third party acquiring an interest in the Lot) from liability for any Assessments which thereafter become due with respect to the Lot or from the lien thereof.

(d) Any Assessments, late charges, interest, and associated costs of collection that are lost as a result of a sale or transfer of a Lot covered by subparagraph (b), above, shall be deemed to be a Common Expense collectible from the Owners of all of the Lots, including the person who acquires the Lot and his or her successors and assigns.

(e) No sale or transfer of a Lot as the result of foreclosure, exercise of a power of sale, or otherwise, shall affect the Association's right to maintain an action against the foreclosed previous Owner personally to collect the delinquent Assessments, late charges, interest, and associated costs of collection incurred before and/or in connection with the sale or transfer.

**Section 4.12** Priorities. When a Notice of Delinquent Assessment has been Recorded, such notice shall constitute a lien on the Lot prior and superior to all other liens or encumbrances Recorded subsequent thereto, except (a) all taxes, bonds, assessments, and other levies that, by law, would be superior thereto, and (b) the lien or charge of any first Mortgage of Record (meaning any Recorded Mortgage with first priority over other Mortgages) made in good faith and for value, provided, however, that such subordination shall apply only to the Assessments that have become due and payable before the transfer of such property under the exercise of a power of sale or a judicial foreclosure involving a default under such first Mortgage or other prior encumbrance.

**Section 4.13** Unallocated Taxes. If any taxes are assessed against the Common Area, or the personal property of the Association, rather than being assessed to the Lots, such taxes shall be included in the Regular Assessments imposed under Section 4.02, and, if necessary, a Special Assessment may be levied against the Lots in accordance with Section 4.03(a) in an amount equal to such taxes to be paid in two installments, thirty (30) days before the due date of each tax installment.

## **ARTICLE V ARCHITECTURAL CONTROL**

**Section 5.01** Approval of Improvements by Board or Architectural Committee.

(a) Approval, Generally. Before commencing construction or installation of any Improvement within the Development (as defined in Section 1.16), the Owner planning such Improvement must submit a written request for approval to the Board of Directors or its duly appointed Architectural Committee, if such a committee is established under Section 5.02, and Article X of the Bylaws. The Owner's request shall include structural plans and specifications satisfying the minimum requirements specified in the Architectural Rules (Section 5.05). Unless the Board's approval of the proposal is first obtained, no work on the Improvement shall be undertaken. The Board shall base its decision to approve, disapprove, or conditionally approve the proposed Improvement on the criteria described in Section 5.06. If the Board establishes an architectural committee, all references in this Article to the "Board" or the "Board of Directors" shall be deemed to be references to the Architectural Committee, unless the context shows a contrary intent.

(b) Modifications to Approved Plans Must Also Be Approved. Once a proposed work of Improvement has been duly approved by the Board, no material modifications shall be made in the approved plans and specifications therefore and no subsequent alteration, relocation, addition, or modification shall be made to the work of Improvement, as approved, without a separate submittal to, and review and approval by, the Board. If the proposed modification will have, or is likely to have, a material effect on other aspects or components of the work, the Board, in its discretion, may order the Owner and his or her contractors and agents to cease working not only on the modified component of the Improvement, but also on any other affected component. The restrictions of this subparagraph (b) shall also apply to any proposed modification of any Residence, fence, or other structure from its appearance or location as originally constructed by the Declarant.

If it comes to the knowledge and attention of the Association, the Architectural Committee, or the agents or employees of either, that a work of Improvement, or any modification thereof, is proceeding without proper approval, the Association shall be entitled to exercise the enforcement remedies specified in Article XIII, including, without limitation, ordering an immediate cessation and abatement of all aspects of the work of Improvement until such time as proper architectural review and approval is obtained.

**Section 5.02** Composition of the Architectural Committee. If the Board elects to establish an Architectural Committee under Article X of the Bylaws, the Committee shall be composed of three (3) or five (5) Members of the Association appointed by the Board. In selecting Members for the Committee, the Board shall endeavor to select individuals whose occupations or education will provide technical knowledge and expertise relevant to matters within the Committee's jurisdiction. Committee members shall serve one (1)-year terms subject to the Board's power to remove any Committee member and to appoint his or her successor. Neither the members of the Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant hereto. If the Board establishes a Committee, it shall have those powers which are specifically designated by the Board in the resolution establishing the Committee.

**Section 5.03** Duties. The Board shall have the duty to consider and act on the proposals and plans for Improvements submitted to it under this Declaration, to adopt

Architectural Rules under Section 5.05, and to carry out all other architectural review duties imposed on it by this Declaration.

**Section 5.04** Meetings. The Board shall meet from time to time as necessary to properly perform the architectural review functions described herein. The vote or written consent of a majority of the Board shall constitute the action of the Association. The Board shall keep and maintain a written record of all actions taken, and actions on architectural matters may be undertaken by the Board at its regular Board meetings. Any decision on a proposed Improvement project shall be made in a fair, reasonable, and expeditious manner, shall be made in good faith, and shall not be unreasonable, arbitrary, or capricious. Decisions shall be consistent with any governing provision of law, including, without limitation, the Fair Employment and Housing Act [Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the California Government Code].

The applicant shall be entitled to appear at any meeting of the Board at which his or her proposal has been scheduled for review and consideration. The applicant shall be entitled to be heard on the matter and may be accompanied by his or her architect, engineer and/or contractor, if any. Other Owners whose Lots may be affected by the proposed Improvement (in terms of the view or solar access of their Lot, noise, or other considerations) shall also be entitled to attend the meeting at the discretion of the Board.

Reasonable notice of the time, place, and proposed agenda for the review of architectural matters shall be communicated before the date of the meeting to any applicant whose application is scheduled to be heard. Notice may also be given to neighboring Owners if the Board, in the reasonable exercise of its discretion, considers such notice appropriate.

**Section 5.05** Architectural Rules. The Board of Directors may, from time to time, adopt, amend, and repeal rules and regulations to be known as "Architectural Rules." The Architectural Rules shall interpret and implement the provisions hereof by setting forth (a) the standards and procedures for architectural review, including the required content of Improvement plans and specifications; (b) guidelines for architectural design, placement of any work of Improvement or color schemes, exterior finishes, and materials and similar features that are recommended or required for use in connection with particular Improvement projects within the Development; and (c) the criteria and procedures for requesting variances from any property use restrictions that would otherwise apply to the proposed Improvement under the Governing Documents (see Section 5.11). Notwithstanding the foregoing, no Architectural Rule shall be in derogation of the minimum standards required by this Declaration. In the event of any conflict between the Architectural Rules and this Declaration, the provisions of the Declaration shall prevail. If the right to adopt Architectural Rules is delegated to the Committee, any such rule shall not become effective until it has been approved by the Board.

Among other things, the Architectural Rules shall provide a fair, reasonable, and expeditious procedure for making decisions on submitted Improvement plans and projects. The procedures shall include prompt deadlines for various actions and a maximum time for response to an application, consistent with Section 5.07.

**Section 5.06** Basis for Approval of Improvements. When a proposed Improvement is submitted to the Board/Architectural Committee for review, the Board/Architectural Committee shall grant the requested approval only if the Board/Architectural Committee, in its sole discretion, makes the following findings regarding the proposed project:

(a) The Owner's plans and specifications conform to this Declaration and to the Architectural Rules in effect at the time such plans are submitted to the Committee;

(b) The Improvement will be in harmony with the external design of other structures and/or landscaping within the Development;

(c) The Improvement, as a result of its appearance, location, or anticipated use, will not interfere with the reasonable enjoyment of any other Owner of his or her property; and

(d) The proposed Improvement(s), if approved, will otherwise be consistent with the architectural and aesthetic standards prevailing within the Development and with the overall plan and scheme of development within the Development.

The Board shall be entitled to determine that a proposed Improvement or component thereof is unacceptable when proposed on a particular Lot, even if the same or a similar Improvement/component has previously been approved for use at another location within the Development if factors such as drainage, topography, or visibility from roads, Common Areas, or other Lots or prior adverse experience with the product or components used in construction of the Improvement, design of the Improvement, or its use at other locations within the Development militate against erection of the Improvement or use of a particular component thereof on the Lot involved in the Owner's submittal.

In approving a request for construction of an Improvement, the Board may condition approval on the adoption of modifications in the plans and specifications or observance of restrictions as to location, noise abatement or similar mitigating conditions.

**Section 5.07** Time Limits for Approval or Rejection. Within forty-five (45) days after submission of plans and specifications satisfying the requirements of the Architectural Rules, the Board shall return one set of such plans to the applicant, with either written notice of approval or disapproval or with written suggestions of changes required for approval accompanying the returned set of plans. If the Board recommends that the plans and specifications be modified, the applicant may implement such changes to the plans and within thirty (30) days resubmit plans incorporating such changes for approval to the Board, which shall not unreasonably withhold its approval so long as the applicant has complied in all material respects with the requested changes. If no written notice of approval or disapproval is received by the applicant within forty-five (45) days after the Owner's plans and specifications (or revisions thereto) are submitted to the Board, the plans shall be deemed to have been approved as submitted.

If the Board establishes an Architectural Committee, the Committee's decisions shall be deemed final, unless within thirty (30) days thereafter the Owner-Applicant appeals the decision to the Board, and in such case, the appeal shall be placed on the agenda for confirmation, modification, or denial at the next scheduled Board meeting, and the forty-five (45) day period

specified herein for Association action shall be extended to include the days from the Committee's action until the next regular meeting of the Board.

**Section 5.08** Proceeding With Work. On receipt of approval of an Improvement project from the Board of Directors, the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement of construction of the Improvement pursuant to the approval. In all cases, work on an Improvement project shall commence within six (6) months from the date of such approval. If the Owner fails to comply with this section, any approval given under this Article shall be deemed revoked unless the Board, on written request of the Owner, tendered before the expiration of the initial 6-month period, extends the time for commencement or completion. No such extension shall be granted except on a finding by the Board that there has been no change in the circumstances on which the original approval was granted and that the Owner has a bona fide intention and ability to complete the Improvement project within the time specified in the extension request.

**Section 5.09** Failure to Complete Work. Unless the Board grants the Owner an extension of time to complete the project, construction, reconstruction, refinishing or alteration of any such Improvement must be completed within six (6) months after construction has commenced, except and for so long as such completion is rendered impossible or would result in great hardship to the Owner because of strikes, fires, national emergencies, natural calamities or other supervening forces beyond the control of the Owner or his or her agents.

If the Owner fails to comply with this section, the Board shall proceed in accordance with the provisions of Sections 5.10(c) and (d), as though the failure to complete the Improvement was a noncompliance with approved plans.

**Section 5.10** Inspection of Work by the Board. Inspection of the work relating to any approved Improvement and correction of defects therein shall proceed as follows:

(a) During the course of construction, representatives of the Board shall have the right to inspect the job site to confirm that the work of Improvement is proceeding in accordance with the approved plans and specifications.

(b) On the completion of any work of Improvement for which architectural approval is required under this Article, the Owner shall give the Board of Directors a written notice of completion.

(c) Within thirty (30) days thereafter, the Board may inspect the Improvement to determine whether it was constructed, reconstructed, altered, or refinished in substantial compliance with the approved plans. If the Board finds that the Improvement was not erected, constructed, or installed in substantial compliance with the Owner's approved plans, then within the thirty (30)-day inspection period the Board shall give the Owner a written notice of noncompliance detailing those aspects of the project that must be modified, completed, or corrected. If the violation or nonconforming work is not corrected, the Board shall have the enforcement rights and remedies set forth in Article XIII.

(d) If for any reason the Board fails to notify the Owner of any noncompliance within thirty (30) days after receipt of the Owner's notice of completion, the Improvement shall be

deemed to have been constructed in accordance with the approved plans for the project, unless it can be demonstrated that the Owner knew of the noncompliance and intentionally misled the Board with respect thereto.

**Section 5.11**      Variances. The Board of Directors, in its sole discretion, shall be entitled to allow reasonable variances in any procedures specified in this Article V, or in any of the minimum improvement standards imposed by Article VI, to overcome practical difficulties, avoid unnecessary expense, or prevent unnecessary hardship to any Owner-applicant, provided all of the following conditions are met:

(a) If the requested variance will necessitate deviation from, or modification of, a property use restriction that would otherwise be applicable under this Declaration, the Board may, but shall not be obligated to, condition approval of the variance on the Owner-applicant's receipt of approvals for the variance from neighboring Owners of Lots within a prescribed radius of the applicant-Owner's Lot. Under such circumstances, the Board shall be entitled to issue notice to the neighboring Owners of the date, time, and location of the Board's hearing on the variance proposal, to afford the neighbors an opportunity to attend and be heard on the matter.

(b) If the requested variance pertains to any material Improvement or project, the Board must make a good faith written determination that the variance is consistent with one or more of the following criteria: (i) the requested variance will not constitute a material deviation from any restriction contained herein or that the variance proposal allows the objectives of the violated requirement(s) to be substantially achieved despite noncompliance; or (ii) that the variance relates to a use restriction or minimum construction standard otherwise applicable hereunder that is unnecessary or burdensome under the circumstances; or (iii) that the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance with respect to any other Lot or Common Area within the Development.

**Section 5.12**      Compliance Certificate. Within thirty (30) days after written demand is delivered to the Board by any Owner, and on payment to the Association of a reasonable fee (as established from time to time by the Board), the Board shall Record a Compliance Certificate, executed by any two directors, certifying (with respect to any Lot owned by the Owner-applicant) that as of the date thereof, either: (a) all Improvements made and other work completed by the Owner comply with this Declaration, or (b) such Improvements or work do not so comply, in which event the certificate shall also identify the noncomplying Improvements or work and set forth with particularity the basis of such noncompliance. Any purchaser from the Owner, or from anyone deriving any interest in the Lot through the Owner, shall be entitled to rely on the Association's Compliance Certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, all Owners and any persons deriving any interest through them.

**Section 5.13**      Limitation on Liability. Neither the Association nor the Board or the Architectural Committee (if any) or any member thereof, shall be liable to any Owner for any damage, loss or prejudice suffered or claimed on account of any mistakes in judgment, negligence or nonfeasance arising out of (a) the approval or disapproval of any plans, drawings, and specifications, whether or not defective; (b) the construction or performance of any Improvement project, whether or not under approved plans, drawings, or specifications; (c) the

granting of a variance under Section 5.11; or (d) the execution and delivery of a Compliance Certificate under Section 5.12, whether or not the facts therein are correct, provided, however, that such member has acted in good faith on the basis of such information as he or she possessed at the time the act or omission occurred.

**Section 5.14** Compliance With Governmental Regulations. Review and approval by the Board of any proposals, plans or other submittals pertaining to Improvements shall in no way be deemed to constitute satisfaction of, or compliance with, any building permit process or any other governmental requirements, the responsibility for which shall lie solely with the Owner who desires to construct, install or modify the Improvement.

## **ARTICLE VI MINIMUM IMPROVEMENT STANDARDS**

Unless a variance is requested from, and granted by, the Architectural Committee in accordance with Section 5.11, Improvements constructed on any Lot in the Development shall conform to the following minimum improvement standards:

**Section 6.01** Building Plans. All building and Improvement plans must be submitted to, and approved by, the Architectural Committee before being submitted to any governmental agency to obtain a building permit.

**Section 6.02** Compliance With Approved Plans and Applicable Improvement Requirements. Once approved by the Architectural Committee, the Improvement project must be constructed and completed in accordance with the approved plans and specifications and any applicable minimum construction standards imposed by this Article VI or the Architectural Rules (unless the Committee has approved a specific variance from those standards).

**Section 6.03** Licensed Contractor. Residential structures and any other significant structural Improvement project, as reasonably determined by the Committee, shall be performed by a contractor licensed under the laws of the State of California and, if considered necessary or appropriate by the Committee, shall be designed by a licensed architect.

**Section 6.04** Site and Drainage Review. General site considerations, including site layout, open space and topography, orientation and locations of buildings, vehicular access, circulation and parking, setbacks, height, walls, fences, and similar elements shall be designed to provide a desirable environment and to avoid alteration of established drainage courses.

**Section 6.05** Hours of Permitted Construction Activity. Noise-producing construction activities are prohibited on Sundays and are permitted from 7:00 AM. to the earlier of 7:00 PM or dusk on Mondays through Fridays and from 9:00 AM to the earlier of 7:00 PM or dusk on Saturdays.

**Section 6.06** Antennas, Aerials, and Satellite Dishes. To ensure adequate aesthetic controls and to maintain the general attractive appearance of the Development, no Owner, resident, or lessee shall place or maintain any objects, such as masts, towers, poles, or radio or television antennas, on the exterior of any building within the Development unless design review and approval is first obtained in accordance with Article V; provided, however, that:

(a) The Association shall have the right, without obligation, to erect, place, or install and maintain any such apparatus for the benefit of all, or a portion of, the Development;

(b) In accordance with federal law, antennas or satellite dishes with a diameter or diagonal measurement not greater than thirty-six (36) inches that are designed to receive direct broadcast satellite services, video programming services via multipoint distribution services, or television broadcast signals (collectively, "Permitted Devices") may be erected, placed, or installed on a Lot; provided that:

(i) Any such Permitted Device is placed in the least conspicuous location on the Residence at which an acceptable quality signal can be received and the location is pre-approved by the Association's Board of Directors;

(ii) Reasonable restrictions that do not significantly increase the cost of installing a Permitted Device or significantly decrease its efficiency or performance (including, without limitation, screening material, location, or complimentary-color painting of the Permitted Device), may be imposed as part of the Architectural Rules.

Furthermore, no activity shall be conducted on any Lot that causes an unreasonable broadcast interference with television or radio reception on any neighboring Lot.

## **ARTICLE VII ASSOCIATION AND OWNER MAINTENANCE RESPONSIBILITIES**

**Section 7.01** Association Maintenance Responsibilities. Except as otherwise provided herein, the Association shall be solely responsible for all maintenance, repair, upkeep, and replacement of all portions of the Common Area, including, but not limited to the clubhouse building including each interior room contained therein; the trees, hedges, plantings, lawns, shrubs, landscaping, utilities, pipes, lines, clubhouse and street lighting fixtures, guest parking spaces, Association signs (not Residence address signs), concrete walk ways, private roads, the utilities and plumbing lines through the Common Area to the point of entry to a Lot, the sewer and storm drainage system and other facilities constructed or installed, or to be constructed or installed, or currently located within the Common Area and owned by the Association; provided, however, the individual Owners shall pay to the Association the costs of maintenance, repair and replacement of all plumbing and sewer lines, utilities, equipment, lines, pipes, conduit located in the Common Area and exclusively serving the Owner's individual Lot and Residence to the point of connection to the common plumbing and sewer lines, utilities, equipment, lines, pipes, conduit serving the other Lots and Residences as provided below.

Additionally, the Association, in its sole discretion and control, shall be responsible for the following: (1) to replace the roofs on the buildings in which the Residences are located (hereafter the "Buildings");(2) to maintain and replace as appropriate (at sole discretion of the Association) the trees and Association irrigation lines located in the front yards of the Lots; and (3) to paint the exterior of the Buildings, patio walls, balconies, decorative trim, fascia, chimneys and fences (routine and customary painting only at the sole discretion of the Association).

No person, other than the Association or its duly authorized agents, shall construct, reconstruct, refinish, alter, or maintain any Improvement on, or shall create any excavation or fill or change the natural or existing drainage of any portion of the Common Area. In addition, no person shall remove any tree, shrub, or other vegetation from, or plant any tree, shrub, or other vegetation on the Common Area without express approval of the Association.

**Section 7.02**      Owner Maintenance Responsibilities. Except as provided above, each Owner shall be responsible for the maintenance, repair and replacement of his or her Residence and Lot, including, any exclusive use areas, windows, doorknobs and locks, garage doors and openers, chimneys including the cleaning and ash removal, walls, balconies, decorative trim, fascia, fences, lighting fixtures, address signs, private walkways, private driveways, patios, hot water heaters, private mailboxes and brackets (subject to ARC approval of design and placement), trees, hedges, plantings, lawns, shrubs, landscaping, painting of the exterior of the Buildings, patio walls, balconies, decorative trim, fascia, chimneys and fences necessitated by Owner repairs, plumbing and sewer lines located on their Lot and all utilities, equipment, lines, pipes, conduit contained within their Lot and patio, including without limitation, paying all utility hook up and monthly fees; and Owner shall be responsible for paying the Association for the costs of maintenance, repair and replacement of all plumbing and sewer lines, utilities, equipment, lines, pipes, conduit located in the Common Area and exclusively serving their Lot and Residence to the point of connection to the common plumbing and sewer lines, utilities, equipment, lines, pipes, conduit serving the other Lots and Residences. Additionally, each Owner shall be responsible for the maintenance and repair of the roof, roof vents, gutters and downspouts located on the buildings in which their Residence is located (hereafter the “Buildings”), including necessary maintenance and repairs to safeguard and secure the chimneys to the roofline from leaks into the Buildings and all damage to their Residences and Lots caused by wood destroying pests and organisms, including termites, mold, mildew and dry rot (hereafter collectively referred to as “Termites”). Each Owner shall be responsible to each other Owner for damages to each other Owner’s Lot or Residence caused by negligence in Owner’s performance of the maintenance, repair and replacement responsibilities set forth herein.

**Section 7.03**      Association Recovery of Costs of Certain Repairs and Maintenance.

(a)      Association Maintenance Necessitated by Owner Negligence. If the need for maintenance or repair, which would otherwise be the Association’s responsibility hereunder, is caused through the willful or negligent acts of an Owner, his or her family, guests, tenants, or invitees, and is not covered or paid for by insurance policies maintained by the Association or the responsible Owner, the cost of such maintenance or repairs shall be subject to recovery by the Association through the imposition of a Special Individual Assessment against the offending Owner in accordance with Section 4.04.

(b)      Owner Defaults in Maintenance Responsibilities. If an Owner fails to perform maintenance or repair functions on the Owner’s Lot for which he or she is responsible, the Association may give written notice to the offending Owner with a request to correct the failure within fifteen (15) days after receipt thereof. If the Owner refuses or fails to perform any necessary repair or maintenance, the Association may exercise its rights under Section 3.06(b), to

enter the Owner's Lot and perform the repair or maintenance so long as the Owner has been given notice and the opportunity for a hearing in accordance with Section 13.06.

**Section 7.04**      Cooperative Maintenance Obligations. To the extent necessary or desirable to accomplish the Association's maintenance and repair obligations hereunder, individual Owners shall cooperate with the Association and its agents and maintenance personnel in the prosecution of its work.

**Section 7.05**      Maintenance of Common Party Walls

(a)      General Rules of Law to Apply. Some Residences within the Development share a common wall and roof. This Section 7.05 is intended to address the respective responsibilities of adjoining Owners with respect to such shared Improvements. Each common wall and common roof that was built as a part of the original construction of the Residences on the Development and placed on the dividing line between the Lots shall constitute a Party Wall (the term Party Walls is defined in Section 1.23, above). To the extent not inconsistent with the provisions of this Article VII, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions, shall apply thereto.

(b)      Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners who make use of the wall in equal proportion to such use.

(c)      Destruction by Fire or Other Casualty. If a Party Wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance and repaired using those proceeds, any Owner who has used the Party Wall may restore it; and, if the other Owner thereafter makes use of the Party Wall, that other Owner shall contribute to the cost of restoration thereof in equal proportion, without prejudice to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d)      Weatherproofing. Notwithstanding any other provision of this Article VII, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who negligently or willfully causes the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e)      Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article VII shall be appurtenant to the land and shall pass to such Owner's successors in title.

(f)      Rights of Contribution Are Appurtenant. The right of any Owner to contribution from any other Owner under this Article VII shall be appurtenant to the land and shall pass to such Owner's successors in title.

(g)      Arbitration of Disputes. If a dispute should arise between Owners concerning a Party Wall or sharing the cost of repair or replacement of any Party Wall, then, on written request of one of such Owners addressed to the Association, the matter may be submitted to the Board of Directors, who shall be empowered, but not obligated, to decide the dispute in

accordance with the hearing procedures specified in Section 13.06. The Board's decision on the matter shall be conclusive and binding on the parties.

## **ARTICLE VIII USE OF DEVELOPMENT AND RESTRICTIONS**

In addition to the restrictions established by law or Association Rules promulgated by the Board of Directors (consistent with this Declaration), the following restrictions are hereby imposed on the use of Lots, Common Areas, and other parcels within the Development.

**Section 8.01**      Residential Use. The use of the individual Lots in the Development is hereby restricted to Residential Use. In no event shall a Residence be occupied by more individuals than permitted by applicable zoning laws or governmental regulations.

**Section 8.02**      Lots. Each Lot shall be conveyed as a separately designated and legally described fee simple estate subject to this Declaration.

**Section 8.03**      Interior Improvements. No Owner shall undertake any activity or work with respect to the Owner's Residence that will impair the structural soundness or integrity of any adjoining Residence or impair any easement or property right, or do any act or allow any condition to exist in or around the Owner's Residence or Lot that will adversely affect any other Residences or their occupants. Any interior Improvements involving the structural components of the Residence, other than nonload-bearing interior walls, shall require prior architectural approval in accordance with Article V and shall be completed by a qualified licensed professional.

**Section 8.04**      Common Area. The Common Area shall be used for purposes incidental and ancillary to the use of Lots. Such use shall be limited to private use by the Members, their tenants, families, and guests, subject to the provisions of the Governing Documents. No Improvement, excavation, or work that in any way alters any Common Area or Common Facility from its natural or existing state shall be made or done except by the Association, and then, only in strict compliance with the provisions of this Declaration.

**Section 8.05**      Prohibition of Noxious Activities. No illegal, noxious, or offensive activities shall be carried out or conducted on any Lot or Common Area, nor shall anything be done within the Development that is or could become an unreasonable annoyance or nuisance to neighboring property Owners. Without limiting the foregoing, no Owner shall permit noise, including, but not limited to, barking dogs, the operation of excessively noisy air conditioners, stereo amplifier systems, television systems, motor vehicles, or power tools, to emanate from an Owner's Lot or from activities within the Common Area, which would unreasonably disturb any other Owner's or tenant's enjoyment of his or her Lot or the Common Area. Smoking in the Clubhouse and within 25 feet of the Clubhouse entrances and within 25 feet of all outdoor patios shall be prohibited. This prohibition shall extend to smoking cigarettes, marijuana and electronic cigarettes.

**Section 8.06**      Household Pets. The following restrictions regarding the care and maintenance of pets within the Development shall be observed by each Owner and resident:

(a) A reasonable number of common household pets may be kept on each Lot as long as the same are not kept, bred, or maintained for commercial purposes; provided, however provided that any such pets shall meet the rules adopted by the Board regarding number, size, disposition, and/or maintenance requirements and standards for the reasonable control and keeping of pets in, on, and around the Development to ensure that the same do not interfere with the quiet and peaceful enjoyment of the Development by the other Owners and residents. No other animals, livestock, or poultry of any kind shall be kept, bred, or raised on any Lot or in any Residence.

(b) Dogs shall only be allowed on the Common Area when they are leashed and otherwise under the supervision and restraint of their Owners.

(c) No household pet shall be left chained or otherwise tethered in front of a Lot or in the Common Area. Pet owners shall be responsible for the prompt removal and disposal of pet wastes deposited by their pets within the Development.

(d) Each person bringing or keeping a pet on the Development shall be solely responsible for the conduct of his or her pet(s). The Association, its Board, officers, employees, and agents shall have no liability (whether by virtue of this Declaration or otherwise) to any Owners, their family members, guests, invitees, tenants, and contract purchasers for any damage or injury to persons or property caused by any pet.

(e) The Board shall have the right to establish and enforce additional rules and regulations defining in a uniform and nondiscriminatory manner what constitutes a “reasonable number” of pets, depending on their size, disposition, and/or maintenance requirements and impose standards for the reasonable control and keeping of household pets in, on, and around the Development to ensure that the same do not interfere with the quiet and peaceful enjoyment of the Development by the other Owners and residents.

**Section 8.07** Signs. Except as noted below, no sign or billboard of any kind (including but not limited to commercial or political signs) shall be displayed to the public view on or from any Lot or posted within or on any portion of the Common Area without the approval of the majority of the Owners. The exceptions are:

(a) Directional signs established by the Association;

(b) Such signs as may be required for legal proceedings or notices;

(c) Residential identification signs approved by the Association;

(d) Signs advertising Lots "For Sale" or "For Rent" which shall be of customary and reasonable dimensions and of a professional type and dignified appearance;

(e) Noncommercial signs, posters, flags, or banners otherwise permitted by law (including political signs) which are displayed to the public view on or from any Lot except that under no circumstances may a noncommercial sign or poster exceed 9 square feet or a noncommercial flag or banner that exceeds 15 square feet.

(f) The Board shall have the right to establish and enforce additional rules and regulations regarding the display of signs and impose standards for the reasonable control and keeping of signs in, on, and around the Development to ensure that the same do not interfere with the quiet and peaceful enjoyment of the Development by the other Owners and residents.

**Section 8.08** Business Activities. No business or commercial activities of any kind whatsoever shall be conducted in any Residence, garage, or out building or in any portion of any Lot without the prior written approval of the Board; provided, however, the foregoing restriction shall not apply to the activities, signs, or activities of the Association in the discharge of its responsibilities under the Governing Documents. Furthermore, no restrictions contained in this section shall be construed in such a manner so as to prohibit any Owner from (a) maintaining his or her personal library in his or her Residence; (b) keeping his or her personal business records or accounts therein; (c) handling his or her personal or professional calls, correspondence, or electronic communications therefrom; (d) leasing or renting his or her Residence in accordance with Section 2.04; or (e) conducting any other activities on the Owner's Lot otherwise compatible with residential use and the provisions of this Declaration which are permitted under applicable zoning laws or regulations without the necessity of first obtaining a special use permit or specific governmental authorization so long as any such activity does not involve exterior signage or create customer traffic within the Development. The uses described in (a) through (e), above, are expressly declared to be customarily incidental to the principal residential use and not in violation of this section.

**Section 8.09** Trash Disposal. No rubbish, trash, or garbage shall be allowed to accumulate outside of the exterior of any Residence or on any Lots. Any trash that is accumulated by an Owner outside the interior walls of a Residence shall be stored entirely within appropriate covered disposal containers and facilities located on the Owner's Lot in an area that is screened from view from any street, neighboring Lot, or Common Area.

Any extraordinary accumulation of rubbish, trash, garbage, or debris (such as, debris generated on vacating of premises or during the construction of modifications and Improvements) shall be removed from the Development to a public dump or trash collection area by the Owner or tenant at his or her expense. The Association shall be entitled to impose reasonable fines and penalties for the collection of garbage and refuse disposed in a manner inconsistent with this section.

**Section 8.10** Storage. Storage of personal property on any Lot shall be entirely within the garages and patio areas of the Lots, and such storage shall not be unsightly. The Board shall have the authority to promulgate further reasonable rules and restrictions of uniform application regarding the storage of personal property within the Project.

**Section 8.11** Burning. There shall be no exterior fires whatsoever, except barbecue fires, located only on Lots and contained within receptacles designed for such purpose and which are located a safe distance from the buildings in the Project. The Board shall have the authority to promulgate further reasonable rules and restrictions of uniform application regarding exterior fires and the use of barbeques within the Project.

**Section 8.12**     Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated, or maintained on or adjacent to any Lot except such machinery or equipment as is usual or customary in connection with the use, maintenance, or repair of a private Residence or appurtenant structures within the Development. Machinery or equipment customarily used in connection with a hobby compatible with residential use shall be permitted as long as such usage otherwise complies with this Declaration.

**Section 8.13**     Diseases and Pests. No Owner shall permit any thing or condition to exist on his or her Lot or in his or her Residence that shall induce, breed, or harbor infectious plant diseases, rodents, or noxious insects.

**Section 8.14**     Parking and Vehicle Restrictions. The following parking and vehicle restrictions shall apply within the Development:

- (a) All driveways and parking spaces shall be maintained in a neat and orderly condition.
- (b) Garage doors shall remain closed when the garage is not in use.
- (c) Guest parking spaces are to be used solely for the temporary parking of standard passenger vehicles and trucks not to exceed a gross loaded weight of 5000 lbs. In no event shall the parking spaces be used in a way that will preclude the parking of vehicles within such spaces.
- (d) Residents are permitted to park no more than one vehicle in the Resident Parking spaces
- (e) No motor vehicle shall be constructed, reconstructed, or repaired within the Common Area or on a Lot or driveway, and no dilapidated or inoperable vehicle, including vehicles without wheel(s) or an engine shall be parked on the Common Area or a Lot or driveway.
- (f) No vehicles shall be stored on the Common Area; provided, however, that the provisions of this section shall not apply to emergency vehicle repairs.
- (g) Campers, boats, trailers, and trucks in excess of a gross loaded weight of 5000 lbs. are not to be parked within the Common Area, except for temporary use by emergency or construction vehicles operated in connection with providing services to an Owner or his Lot and Residence.
- (h) Guest parking spaces are for the temporary use of visitors, guests, service and commercial vehicles providing service to an Owner.
- (i) The Board shall have the authority to promulgate further reasonable rules and restrictions of uniform application regarding the parking and/or operation of vehicles within the Development as may be deemed prudent and appropriate, including adopting designated parking spaces for each Lot.

**Section 8.15** Children. Each Owner and resident shall be accountable to the remaining Owners and residents and their families, visitors, guests, and invitees, for the conduct and behavior of their children and any children temporarily residing in or visiting the Owner/resident and for any property damage caused by such children.

**Section 8.16** Activities Affecting Insurance. Nothing shall be done or kept on any Lot or within any Residence or within the Common Area that will increase the rate of insurance relating thereto on any policy maintained by the Association (see Article X) without the prior written consent of the Association, and no Owner shall permit anything to be done or kept on an Owner's Lot or in a Residence or within the Common Area that would cause any Improvements to be uninsurable against loss by fire or casualty or result in the cancellation of insurance on any Residence or any part of the Common Area.

**Section 8.17** Gas or Liquid Storage. No tank for the storage of gas, caustic chemicals, hazardous waste or liquid shall be installed on or in the Development, except two propane gas tanks not exceeding 5 gallons may be stored on the Lots.

**Section 8.18** Drilling and Mining Operations. The use of any portion of the surface of the Project, or any portion of the subsurface within five hundred (500) feet of the surface, for drilling, mining, or quarrying operations of any kind is hereby prohibited.

**Section 8.19** Variances. On application by any Owner, the Board shall be authorized and empowered to grant reasonable variances from the property use restrictions set forth in this Article VIII, if specific application of the restriction will, in the sole discretion of the Board, either cause an undue hardship to the affected Owner or fail to further or preserve the common plan and scheme of development contemplated by this Declaration. In considering and acting on any request for a variance, the Board shall follow the procedures set forth in Section 5.12 for the granting of architectural variances.

**Section 8.20** Enforcement of Property Use Restrictions. The objective of this Declaration shall be to promote and seek voluntary compliance by Owners and tenants with the environmental standards and property use restrictions contained herein. Accordingly, in the event that the Association becomes aware of an architectural or property use infraction that does not necessitate immediate corrective action under Section 13.06, the Owner or tenant responsible for the violation shall receive written notice thereof and shall be given a reasonable opportunity to comply voluntarily with the pertinent Governing Document provision(s). Such notice shall describe the noncomplying condition, request that the Owner or tenant correct the condition within a reasonable time specified in the notice, and advise the Owner or tenant of his or her right to be heard on the matter.

## **ARTICLE IX EASEMENTS**

**Section 9.01** Encroachment Easements. Each Lot is hereby declared to have an easement over adjoining Lots and Common Area for the purpose of accommodating any encroachment due to roof overhang walls that are built in accordance with the original design, plans, and specifications of Declarant, and due to engineering errors, errors in original

construction, settlement or shifting of the building, or similar causes. There shall be valid easements for the maintenance of these encroachments as long as they shall exist, and the rights and obligations of the Owner shall not be altered in any way by the encroachment, settlement or shifting, provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if the encroachment occurs due to the willful misconduct of the Owner or Owners. In the event a structure is partially or totally destroyed, and is repaired or rebuilt, the Owners of each adjoining Lot agree that minor encroachments over adjoining Lots shall be permitted and that there shall be valid easements for the maintenance of the encroachments so long as they shall exist.

**Section 9.02**      Blanket Utility Easement. There is hereby created a blanket easement on, across, over, and under all of the Development for ingress, egress, installation, replacing, repairing, and maintaining all utilities, including but not limited to water, sewers, gas, telephones, drainage, cable and internet and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment and underground facilities on the Common Area. Notwithstanding the foregoing, no sewer, electrical lines, water lines, or other utilities may be installed or relocated on the Development except as initially designed and approved by the Declarant or thereafter approved by the Board of Directors. The easements provided for in this section shall in no way affect any other Recorded easement on the Development.

**Section 9.03**      Maintenance Easements. An easement is hereby granted to the Association, its officers, agents, employees, and to any management company/contractor selected by the Association to enter in or to cross over the Common Area and any Lot to perform the Association's duties of maintenance and repair of the Lots, Common Area, or Common Facilities provided, however, that any entry by the Association or its agents shall only be undertaken in strict compliance with Section 3.06(b).

**Section 9.04**      Boundary Changes. An easement shall exist for use and maintenance as Common Area over any portion of a Lot which, because of a change in the boundary of a private structure, including a fence, wall or patio, at the time of original construction by Declarant lies between that boundary and a Lot line abutting the Common Area.

**Section 9.05**      Party Wall and Roof Easements. Whenever a wall or roof constituting a common wall or roof for two Residences, is located on the dividing line between adjacent Lots, the Owner of the adjoining Lot shall have reciprocal mutual nonexclusive easements for the maintenance of the wall or roof, the reconstruction of the wall or roof in the event of the partial or total destruction of the same, drainage associated with the wall or roof of the Residence of which the wall or roof is a part, and an easement to accommodate the foundation or roof or eaves encroachment as depicted in the original design, plans, and specifications that were the basis for the original construction of the Residence or Residences on the Lot or Lots. The Owner of a Lot having a roof or wall situated on the boundary line between his or her Lot and the adjoining Lot shall not attach anything to the outside of the roof or wall that will protrude across the boundary line into the adjoining Lot, and the Owner of the adjoining Lot on which such a roof or wall is situated shall not attach anything to the outside of the roof or wall without the consent and permission of the Owner of the adjoining Lot on which the Residence of which the roof or wall is a part is situated.

**Section 9.06** Other Easements. Each Lot and its Owner, and the Association as to the Common Area, are hereby declared to be subject to all the easements, dedications, and rights-of-way granted or reserved in, on, over, and under the Development and each Lot and Common Area as shown on the Subdivision Map.

**Section 9.07** Priority of Easements. Whenever easements granted to the County are, in whole or in part, coterminous with any other easements, the easements of the County shall have and are hereby granted priority over the other easements in all respects.

## **ARTICLE X INSURANCE**

**Section 10.01** Types of Insurance Coverage. The Association shall purchase, obtain, and maintain, with the premiums therefor being paid out of Common Funds, the following types of insurance, if and to the extent such insurance, with the coverage described below, is available at a reasonable premium cost:

(a) Fire and Casualty Insurance. The Association shall obtain and maintain a master or blanket policy of fire and casualty insurance, written on all risk, replacement cost basis, on all Residence Improvements within the Development and on any Common Facilities. The insurance shall be kept in full force and effect at all times and the full replacement value of the insured property shall be re-determined on an annual basis. Depending on the nature of the insured property and the requirements, if any, imposed by institutional Mortgagees having an interest in such property, the policies maintained by the Association under this Section 10.01 shall contain an agreed-amount endorsement or a contingent liability from operation of building laws endorsement or the equivalent, an extended-coverage endorsement, vandalism, malicious-mischief coverage, a special form endorsement and a clause to permit cash settlements for full insurable value in case of partial destruction. The policies required hereunder shall name as insured the Association, all Owners, and all Mortgagees as their respective interests may appear. The policies may contain a loss payable endorsement in favor of the trustee described in Section 10.05.

(b) Public Liability and Property Damage Insurance. To the extent such insurance is reasonably obtainable, a policy of comprehensive public liability and property damage insurance naming as parties insured the Association, each member of the Board, any manager, the Owners and occupants of Lots, and such other persons as the Board may determine. The policy will insure each named party against any liability incident to the ownership and use of the Common Area, and including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than one million dollars (\$1,000,000.00) covering all claims for death, personal injury, and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, liability for nonowned and hired automobiles, liability for property of others, and any other liability or risk customarily covered with respect to projects similar in construction, location and use.

(c) Director's and Officer's Liability Insurance. To the extent such insurance is reasonably obtainable the Association shall maintain individual liability insurance for its directors and officers providing coverage for negligent acts or omissions in their official capacities. The minimum coverage of such insurance shall be at least one million dollars (\$1,000,000.00).

(d) Additional Insurance and Bonds. To the extent such insurance is reasonably obtainable, the Association may also purchase with Common Funds such additional insurance and bonds as it may, from time to time, determine to be necessary or desirable, including, without limiting the generality of this section, earthquake insurance, demolition insurance, flood insurance, and workers' compensation insurance. The Board shall also purchase and maintain fidelity bonds or insurance in an amount not less than one hundred percent (100%) of each year's estimated annual operating expenses and shall contain an endorsement of any person who may serve without compensation.

**Section 10.02** Coverage Not Available. In the event any insurance policy, or any endorsement thereof required by this Article X, is for any reason not available, then the Association shall obtain such other or substitute policy or endorsement as may be available which provides, as nearly as possible, the coverage hereinabove described. The Board shall notify the Owners of any material adverse changes in the Association's insurance coverage.

**Section 10.03** Copies of Policies. Copies of all insurance policies (or certificates thereof showing the premiums thereon have been paid) shall be retained by the Association and shall be available for inspection by Owners at any reasonable time.

**Section 10.04** Individual Fire and Casualty Insurance Limited. Except as provided in this section, no Owner can separately insure his or her Residence or any part of it against loss by fire or other casualty covered by the Association's blanket insurance carried under Section 10.01(a), above. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under the provisions of Section 10.01(a), that results from the existence of such other insurance will be chargeable to the Owner who acquired such other insurance; and the Owner will be liable to the Association to the extent of any diminution. An Owner can insure his or her personal property against loss. In addition, any Improvements made by an Owner within his or her Lot may be separately insured by the Owner; but the insurance is to be limited to the type and nature of coverage commonly known as "tenant's improvements." All such insurance that is individually carried must contain a waiver of subrogation rights by the carrier as to other Owners, the Association, and any institutional first Mortgagee of such Lot.

**Section 10.05** Trustee. All insurance proceeds payable under Section 10.01 and subject to the rights of the Mortgagees under Section 10.07, may, in the discretion of the Board of Directors, be paid to a trustee to be held and expended for the benefit of the Owners, Mortgagees, and others, as their respective interests shall appear. The trustee shall be a commercial bank in the County that agrees in writing to accept such trust.

**Section 10.06** Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried

under Section 10.01. The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.

**Section 10.07**     Distribution to Mortgagees. Subject to the provisions of Article XIV, any Mortgagee has the option to apply insurance proceeds payable on account of a Lot in reduction of the obligation secured by the Mortgage of such Mortgagee.

**Section 10.08**     Insurance on Lots and Residences. An Owner may carry whatever personal liability, property damage liability, fire and casualty insurance with respect to his or her Lot, Residence, and personal property as the Owner desires. The Association shall have no responsibility for the adequacy or extent of such insurance coverage.

## ARTICLE XI DAMAGE OR DESTRUCTION

**Section 11.01**     Circumstances in Which Association's Obligation to Repair or Replace Is Absolute.

(a)     Destruction; Proceeds Exceed Stated Percentage of the Reconstruction Costs. If there is a total or partial destruction of any Improvements in the Development, and if the available proceeds of the insurance maintained under Article X are sufficient to cover not less than eighty-five percent (85%) of the costs of repair and reconstruction, the Association shall promptly rebuild the damaged Improvements unless, within ninety (90) days from the date of destruction, seventy-five percent (75%) of the "eligible Members" (as defined in Section 11.04, determine that the damaged structure(s) should not be repaired. If repair and reconstruction is to take place, the Board shall be required to Record, not later than one hundred twenty (120) days from the date of such destruction, a certificate declaring the intention of the Members to rebuild.

(b)     Minor Repair and Reconstruction. The Board shall have the absolute duty to repair and reconstruct damaged Improvements, without the consent of Members and irrespective of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction does not exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year when aggregated with any other Special Assessments for the same fiscal year. Any amounts paid by the Board hereunder shall be assessed to the Owners in accordance with the allocation formula specified in Section 11.03.

**Section 11.02**     Destruction; Proceeds Less Than Stated Percentage of Reconstruction Costs.

(a)     Member Approval Required. If the proceeds of insurance are less than eighty-five percent (85%) of the cost of repair and reconstruction, the Association may proceed with the project if, within ninety (90) days from the date of the event causing the damage or destruction, approval is obtained from eligible Members then holding at least fifty-one percent (51%) of the total Voting Power. If Member approval is received, the Board shall be required to Record, not

later than one hundred twenty (120) days from the date of such destruction, a certificate declaring the intention of the Members to rebuild.

(b) Rebuilding Not Authorized. If the eligible Members voting on the matter determine not to rebuild, then any insurance proceeds then available for such rebuilding shall be distributed to the Owner of each affected Lot and his or her institutional Mortgages, as their interests may appear, in proportion to the respective fair market values of the affected Lots at the time of destruction. Fair market value shall be determined by an independent appraisal conducted in accordance with the provisions of Section 11.06. The Board shall have the duty, within one hundred twenty (120) days from the date of such destruction, to Record a certificate declaring the intention of the Members not to rebuild.

**Section 11.03**     Rebuilding Procedures When Reconstruction is Authorized.

(a) Special Assessment of Members to Fund Uninsured Portion of Project. If the eligible Members determine to rebuild, under Section 11.01 or Section 11.02, the Owner of each Residence located within a structure that has been totally or partially destroyed shall be obligated to contribute his or her proportionate share of the cost of reconstruction or restoration of the structure containing his or her Residence, over and above the available insurance proceeds. Each Owner's proportionate share shall be equal to the ratio that the square footage of the gross floor area of his or her Residence bears to the total square footage of the gross floor area of all Residences located in the same building that have been damaged or destroyed. If any Owner fails or refuses to pay his or her proportionate share, the Board may levy a Special Individual Assessment against the Residence of such Owner that may be enforced under the remedies set forth in Article IV or in any other manner provided in this Declaration or by law.

If any Owner disputes the amount of his or her proportionate liability under this Section 11.03, such Owner may contest the amount of his or her liability by submitting to the Board within ten (10) days after notice to the Owner of his or her share of the liability, written objections supported by cost estimates or other information that the Owner deems to be material and may request a hearing before the Board at which the Owner may be represented by counsel. Following such hearing, the Board shall give written notice of its decision to all Owners, including any recommendation that adjustments be made with respect to the liability of any Owners. If such adjustments are recommended, the notice shall schedule a special meeting of Members for the purpose of acting on the Board's recommendation, including making further adjustments, if deemed by the Members to be necessary or appropriate. All adjustments shall be affirmed or modified by fifty-one percent (51%) of the total Voting Power of the eligible Members. If no adjustments are recommended by the Board, the decision of the Board shall be final and binding on all Owners, including any Owner filing objections.

(b) Rebuilding Contract. If the eligible Members determine to rebuild, the Board shall reconstruct the damaged or destroyed portions of the Development substantially in accordance with the original plan, unless a different or modified plan is approved by at least seventy-five (75%) of the Voting Power of all eligible Members. The Board or its authorized representative shall obtain bids from at least two (2) reputable contractors and shall award the repair and reconstruction work to the lowest qualified bidder. The Board shall have the authority to enter into a written contract with the contractor for such repair and reconstruction, and the

insurance proceeds held by the trustee shall be disbursed to the contractor according to the terms and conditions of the agreement. It shall be the obligation of the Board to take all steps necessary to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date.

**Section 11.04** Definition of “Eligible Members” Entitled to Vote. For purposes of any vote under this Article XI, the “Eligible Members” who are entitled to vote shall be (a) the requisite percentage of the total Voting Power of the Members in the case of any damage or destruction of Common Facilities; and (b) in the case of the damage or destruction of any building structure(s) containing Residence units, the requisite percentage shall be the stated affirmative vote of those Members whose Residences are located in the damaged or destroyed structure(s). Any membership vote required hereunder shall be conducted either at a duly convened meeting at which a quorum is present or by written ballot conducted in accordance with Section 4.06 of the Bylaws.

**Section 11.05** Revival of Right to Partition. On Recordation of a certificate described in Section 11.01, the right of any Owner to partition through legal action as described in Article XII shall revive immediately.

**Section 11.06** Appraiser. Wherever in this Article XI or in Article XII reference is made to a determination of the value or fair market value of one or more Residences/Lots by an appraisal, this shall mean an appraisal by an independent appraiser selected by the Board, who shall be a member of the Society of Real Estate Appraisers (SREA) or other nationally recognized appraiser organization and who shall apply its or such other organization’s standards in determining the value or fair market value of each Lot. The costs of such appraisals shall be paid from the sale or insurance proceeds, as the case may be.

## ARTICLE XII CONDEMNATION

**Section 12.01** Sale by Unanimous Consent or Taking. If an action for condemnation of all or a portion of the Development is proposed or threatened by any governmental agency having the right of eminent domain, then, on unanimous written consent of all of the Owners and all institutional Mortgagees, the Development, or a portion thereof, may be sold and conveyed to the condemning authority by the Board or its designees acting as the attorney-in-fact of all Owners under an irrevocable power of attorney, which each Owner by accepting a deed to a Lot in the Development hereby grants and which shall be coupled with the interest of all other Owners, for a price deemed fair and equitable by the Board. If the requisite number of Owners or institutional Mortgagees do not consent to a sale of all or a portion of the Development, and the condemning authority institutes condemnation proceedings, the court shall fix and determine the condemnation award.

///

///

**Section 12.02**     Distribution and Sale Proceeds of Condemnation Award.

(a)     Total Sale or Taking. A total sale or taking of the Development means a sale or taking (i) that renders more than 50 percent of the Lots uninhabitable (such determination to be made by the Board in the case of a sale and by the court in the case of a taking); or (ii) that renders the Development as a whole uneconomical as determined by the vote or written consent of 66 2/3 percent of those Owners and their respective institutional Mortgagees whose Lots will remain habitable after the taking. However, any determination that a sale or taking is total must be made before the proceeds from any sale or award are distributed. The proceeds of any such total sale or taking of the Development, after payment of all expenses relating to the sale or taking, shall be paid to all Owners and to their respective Mortgagees in the proportion that the fair market value of each Lot bears to the fair market value of all Lots on the Development. The fair market value of Lots shall be determined in the condemnation action, if such be instituted, or by an appraiser.

(b)     Partial Sale or Taking. In the event of a partial sale or taking of the Development, meaning a sale or taking that is not a total taking as determined in Section 12.02(a) the proceeds from the sale or taking shall be paid or applied in the following order of priority and any judgment of condemnation shall include the following provisions as part of its terms:

(i)     To the payment of expenses of the Association in effecting the sale or to any prevailing party in any condemnation action to whom such expenses are awarded by the court to be paid from the amount awarded; then

(ii)    To Owners and to their respective Mortgagees, as their interests may appear, of Lots on the Development whose Lots have been sold or taken, an amount up to the fair market value of such Lots as determined by the court in the condemnation proceeding or by an appraiser, less such Owners' share of expenses paid under subparagraph 12.2(b)(i) (which share shall be in proportion to the ratio that the fair market value of each Owner's Lot bears to the fair market value of all Lots). After such payment, the recipient shall no longer be deemed an Owner and the Board or individuals authorized by the Board, acting as attorney-in-fact of all Owners shall amend the Subdivision Map and this Declaration to eliminate from the Development the Lots so sold or taken; then

(iii)    To any remaining Owner and to his or her Mortgagees, as their interest may appear, whose Lot has been diminished in value as a result of the sale or taking disproportionate to any diminution in value of all Lots, as determined by the court in the condemnation proceeding or by an appraiser, an amount up to the total diminution in value; then

(iv)    To all remaining Owners and to their respective Mortgagees, as their interest may appear, the balance of the sale proceeds or award in proportion to the ratio that the fair market value of each remaining Owner's Lot bears to the fair market value of all remaining Owners' Lots as of a date immediately before commencement of condemnation proceedings, as determined by the court in the condemnation proceeding or by an appraiser.

///

///

**ARTICLE XIII**  
**BREACH AND DEFAULT**

**Section 13.01** Remedy at Law Inadequate. Except for the nonpayment of any Assessment, it is hereby expressly declared and agreed that the remedy at law to recover damages for the breach, default, or violation of any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges, or equitable servitudes contained in this Declaration are inadequate and that the failure of any Owner, tenant, occupant, or user of any Lot, or any portion of the Common Area or Common Facilities, to comply with any provision of the Governing Documents may be enjoined by appropriate legal proceedings instituted by any Owner, the Association, its officers, or Board of Directors, or by their respective successors in interest.

**Section 13.02** Nuisance. Without limiting the generality of the foregoing Section 13.01, the result of every act or omission whereby any covenant contained in this Declaration is violated in whole or in part is hereby declared to be a nuisance, and every remedy against nuisance, either public or private, shall be applicable against every such act or omission.

**Section 13.03** Attorney Fees. Reasonable attorneys' fees and costs shall be awarded to the prevailing party in any procedure to enforce the Governing Documents or a party's rights arising under the Governing Documents. Such enforcement procedure includes an action brought in any court having jurisdiction over any alternative dispute resolution procedure implemented under the Governing Documents or under Civil Code §§5975 and 5900-5965, as those sections may be renumbered and revised from time to time. In any enforcement procedure, such as mediation, conducted under Civil Code §5925, in which there is not an agreement between all of the parties that attorneys will represent them, recoverable costs are limited to attorneys' fees and costs incurred in providing the notices required under such statute.

**Section 13.04** Cumulative Remedies. The respective rights and remedies provided by this Declaration or by law shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude or affect the exercise, at the same or at different times, of any other such rights or remedies for the same or any different default or breach or for the same or any different failure of any Owner or others to perform or observe any provision of this Declaration.

**Section 13.05** Failure Not a Waiver. The failure of any Owner, the Board of Directors, the Association or its officers or agents to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants or easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability on the Association or the Board, or any of its officers or agents.

**Section 13.06** Rights and Remedies of the Association.

(a) Rights, Generally. In the event of a breach or violation of any Association Rule or of any of the restrictions contained in any Governing Document by an Owner, his or her family, or the Owner's guests, employees, invitees, licensees, or tenants, the Board, for and on

behalf of all other Owners, may enforce the obligations of each Owner to obey the Association Rules, covenants, or restrictions through the use of such remedies as are deemed appropriate by the Board and available at law or in equity, including but not limited to hiring legal counsel, imposing fines and monetary penalties, pursuing legal action, suspending the Owner's right to use Common Facilities, or suspending the Owner's voting rights as a Member of the Association; provided, however, that the Association's right to undertake disciplinary action against its Members shall be subject to the conditions set forth in this Section 13.06.

The decision on whether it is appropriate or necessary for the Association to take enforcement or disciplinary action in any particular instance shall be within the sole discretion of the Association's Board or its duly authorized enforcement committee. If the Association declines to take action in any instance, any Owner shall have the rights of enforcement under California Civil Code §§5925-5975, or otherwise by law.

(b) Schedule of Fines. The Board may implement a schedule of reasonable fines and penalties for particular offenses that are common or recurring in nature and for which a uniform fine schedule is appropriate (such as fines for late payment of Assessments or illegally parked vehicles). Once imposed, a fine or penalty may be collected as a Special Individual Assessment, subject to the limitation on the use of lien and foreclosure remedies stated in Section 4.10(b) (ii).

(c) What Constitutes a Violation? A violation of the Governing Documents shall be defined as a single act or omission occurring on a single day. If the detrimental effect of a violation continues for additional days, discipline imposed by the Board may include one component for the violation and, according to the Board's discretion, a per diem component for so long as the detrimental effect continues. Similar violations on different days shall justify cumulative imposition of disciplinary measures. The Association shall take reasonable and prompt action to repair or avoid the continuing damaging effects of a violation or nuisance occurring within the Common Area at the cost of the responsible Owner.

(d) Limitations of Disciplinary Rights.

(i) The Association shall have no power to cause a forfeiture or abridgment of an Owner's right to the full use and enjoyment of his or her Lot due to the failure by the Owner (or his or her family members, tenants, guests, or invitees) to comply with any provision of the Governing Documents or of any duly enacted Association Rule except when the loss or forfeiture is the result of the judgment of a court of competent jurisdiction, a decision arising out of arbitration, or a foreclosure or sale under a power of sale for the Owner's failure to pay Assessments levied by the Association, or when the loss or forfeiture is limited to a temporary suspension of an Owner's rights as a Member of the Association or the imposition of monetary penalties for failure to pay Assessments or otherwise comply with any Governing Documents, so long as the Association's actions satisfy the due process requirements of subparagraph (iii), below.

(ii) Monetary penalties imposed by the Association (A) for failure of a Member to comply with the Governing Documents; (B) as a means of reimbursing the Association for costs incurred by the Association in repairing damage to the Common Area or Common Facilities allegedly caused by a Member; or (C) in bringing the Member and his or her

Lot into compliance with the Governing Documents, may not be characterized nor treated as an Assessment that may become a lien against the Member's Lot enforceable by a sale of the Lot in nonjudicial foreclosure, provided, however, that this limitation on the Association's lien rights shall not apply to charges imposed against an Owner consisting of reasonable late payment penalties to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in the Association's efforts to collect delinquent Assessments.

(iii) No disciplinary action, penalty, or temporary suspension of rights shall be imposed under this Article unless the Owner alleged to be in violation is given at least ten (10) days prior notice by personal delivery or first-class mail that the Board of Directors will be meeting to consider imposing such discipline. The notice shall include, at a minimum, the date, time, and place of the meeting, the nature of the alleged violations for which the Owner may be disciplined, and a statement that the Owner has a right to attend and address the Board at the hearing. The Board shall meet in executive session if requested by the Owner.

(iv) If disciplinary action is taken, the Board shall notify the accused Owner, in writing, either by personal delivery or first-class mail, of the Board's decision within fifteen (15) days following conclusion of the hearing.

(v) In accordance with Civil Code §5855, disciplinary action shall not be effective against an Owner unless the Board fulfills the requirements of this Section. The Association shall also adopt hearing and disciplinary procedures that comply with the requirements set forth in Civil Code §5910.

Notwithstanding the foregoing, under circumstances involving conduct that constitutes (A) an immediate and unreasonable infringement of, or threat to, the safety or quiet enjoyment of neighboring Owners; (B) a traffic or fire hazard; (C) a threat of material damage to, or destruction of, the Common Area or Common Facilities; or (D) a violation of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether a violation has occurred (such as late payment of Assessments or parking violations), the Board, or its duly authorized agents, may undertake immediate corrective or disciplinary action and, on the offending Owner's request (which must be received by the Association, in writing, within five (5) days following the Association's disciplinary action), or on its own initiative, conduct a hearing as soon thereafter as reasonably possible.

(e) Notice and Hearing Procedures. If the Association acts on its own initiative to schedule a hearing, notice of the date, time, and location of the hearing shall accompany the notice of disciplinary action. If the accused Owner desires a hearing, a written request therefore shall be delivered to the Association no later than five (5) days following the date when the fine is levied.

The hearing shall be held no more than fifteen (15) days following the date of the disciplinary action or fifteen (15) days following receipt of the accused Owner's request for a hearing, whichever is later. Under such circumstances, any fine or other disciplinary action shall be held in abeyance and shall only become effective if affirmed at the hearing.

At the hearing, the accused shall be given the opportunity to be heard, including the right to present evidence and to present or question witnesses. The Board shall notify the accused Owner, in writing, of the Board's decision within five (5) business days following conclusion of the hearing. In no event shall the effective date of any disciplinary action commence sooner than five (5) days following conclusion of the hearing unless (i) the hearing merely affirms summary disciplinary action initiated under the immediately preceding paragraph, or (ii) earlier commencement is necessary to preserve the quiet enjoyment of other residents or to prevent further damage to, or destruction of, the Lots or any portion thereof.

(f) Notices. Any notice required by this Article shall, at a minimum, set forth the date and time for the hearing, a brief description of the action or inaction constituting the alleged violation of the Governing Documents, and a reference to the specific Governing Document provision alleged to have been violated. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice, provided, however, that if notice is given by mail it shall be sent by first-class or certified mail sent to the last address of the Member shown on the records of the Association.

(g) Rules Regarding Disciplinary Proceedings. The Board, or an appropriate committee appointed by the Board to conduct and administer disciplinary hearings and related proceedings, shall be entitled to adopt rules that further elaborate and refine the procedures for conducting disciplinary proceedings, so long as such rules meet the minimum requirements of Civil Code §§5850-5855. Such rules, when approved and adopted by the Board, shall become a part of the Association Rules.

**Section 13.07** Court Actions. Court actions to enforce the Governing Documents may be initiated on behalf of the Association only by resolution of the Board. Before filing any Court action seeking declaratory or injunctive relief to interpret or enforce the Governing Documents [including either such action coupled with a claim for monetary damages not in excess of five thousand dollars (\$5000)], the Association shall first comply with the provisions of California Civil Code §§5925-5965 relating to alternative dispute resolution. The Association's own notice and hearing procedures may be drafted to satisfy these statutory requirements.

**Section 13.08** Assessment Collection Actions. The notice and hearing procedures set forth in Section 13.06 shall not apply to any actions by the Association or its duly authorized agents to collect delinquent assessments. Assessment collections shall be subject to the notice and procedural requirements imposed by Section 4.10, above, and any other notice, hearing, and/or dispute resolution requirements or procedures as may be specifically applicable by law to community association assessment collection efforts.

## **ARTICLE XIV PROTECTION OF LENDERS**

**Section 14.01** Assessment Lien Subordinated. Any lien created or claimed under the provisions of Article IV hereof shall be subject and subordinate to the lien of any previously recorded Mortgage given in good faith and for value. No such Mortgagee who acquires title to any Lot by judicial foreclosure or by exercise of power of sale contained in the Mortgage shall

be obligated to cure any breach of this Declaration by a former Owner of such Lot or shall be liable for any unpaid Assessments made against the Lot which accrued prior to the date the Mortgagee acquired such title. No lien created or claimed under the provision of said Article IV shall in any way defeat, invalidate, or impair the rights of any Mortgagee under any such recorded Mortgage.

**Section 14.02** Amendment of this Declaration. No amendment of this Declaration shall affect any of the rights of the holder of any Mortgage described in Section 14.01 hereof which is made in good faith and for value, if such Mortgage is recorded and notice of the delivery and recordation thereof is given to the Association prior to the recording of such amendment, except that the rights of such Mortgagee shall be subject to such amendment if the Mortgagee joins in the execution of the amendment or, pursuant to the provisions of Section 14.04 hereof, votes in favor of the amendment, or approves the same in writing.

**Section 14.03** Additional Subordinations. Notwithstanding anything contained in this Declaration to the contrary, the Association may, upon the affirmative vote of the Owners entitled to vote and holding in the aggregate at least a majority of the voting power of the membership of the Association, execute a subordination agreement or agreements to extend the benefits of Sections 14.01 and 14.02 hereof to Mortgages and Mortgagees not otherwise entitled thereto.

**Section 14.04** Default by Owner; Mortgagee's Right to Vote. In the event of a default by any Owner under a Mortgage encumbering such Owner's Lot, the Mortgagee under such Mortgage shall, upon (i) giving written notice to the defaulting Owner; (ii) recording a Notice of Default in accordance with California Civil Code §2924; and (iii) delivering a copy of such recorded Notice of Default to the Association, have the right to exercise the vote of the Owner at any regular or special meeting of the Association held only during such period as such default continues.

**Section 14.05** Breach; Obligation after Foreclosure. No breach of any provision of this Declaration by Declarant, the Association, or any Owner shall impair or invalidate the lien of any recorded Mortgage made in good faith and for value and encumbering any Lot; but all of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges, and equitable servitudes provided for or created by this Declaration shall be binding upon and effective against any person who acquires title to or any beneficial interest in any Lot through foreclosure, trustee's sale, or otherwise.

**Section 14.06** Exchange of Information. The Association shall, at the request of any Mortgagee of any Lot, (i) report to such Mortgagee any unpaid Assessments due from the Owner of such Lot; and (ii) notify the Mortgagee in writing of any default by such Owner in the performance of his obligations under this Declaration when such default has been in existence for thirty (30) days and has not been cured. Any Mortgagee of any Lot is hereby authorized to furnish to the Board of Directors, upon written request by the Board therefor, the amount of any unpaid balance of any indebtedness secured by the lien of a Mortgage and the amount and due date of any delinquent payment of payments of such indebtedness.

**Section 14.07** Certain Restrictions Affecting the Association. Notwithstanding any other provisions of this Declaration, without the prior written consent of at least seventy-five percent (75%) of the holders of first Mortgages on the Lots [and one hundred percent (100%) of said holders with respect to subsection (b), below], such percentage to be based upon the total of number of Lots so mortgaged, with each such Mortgage entitled to one vote, the Association shall not:

(a) By act or omission abandon, partition, subdivide, encumber, sell or transfer the Common Area or any improvements thereon (except that the granting of any easement for public utilities, or for other public purposes consistent with the intended use of the Project, shall not be deemed a “transfer” as that term is used in this clause);

(b) Change the method provided for in this Declaration of determining the Assessments or other charges which may be assessed against an Owner;

(c) By act or omission waive or abandon the scheme of maintenance and repair of the Project, or the enforcement thereof, as provided for in this Declaration;

(d) Fail to maintain casualty insurance on the Common Facilities in the amount and against the risks provided for in Article X hereof; and

(e) Use any insurance proceeds received as a result of the incurrence of loss or damage to the Common Facilities for any purpose other than the repair, replacement or reconstruction of such Common Facilities.

**Section 14.08** Right of First Mortgagees to Make Certain Payments and Right of Reimbursement Therefor. The holders of first Mortgages on the Lots shall have the right (but not the obligation), jointly or singly, (i) to pay taxes or other assessments or charges which are in default and which may or have become a lien or charge against the Common Area and Common Facilities; (ii) to pay overdue premiums on casualty insurance policies for the Common Facilities; and (iii) to secure and pay for new casualty insurance coverage on the Common Facilities upon the lapse of any such policy, in the amount and against the risks provided for in Article X hereof. Any first Mortgagee making such payment shall be entitled to immediate reimbursement therefor from the Association. Upon the request of any first Mortgagee, the Association shall, by separate instrument signed by the President or any Vice President and the Secretary or any Assistant Secretary, evidence its agreement to the provisions of this Section 14.08 as the same affects the Mortgage held by such Mortgagee.

**Section 14.09** Right to Examine Books and Records of the Association. The holder of any first Mortgage on any Lot or on the Common Area and Common Facilities shall have the right to (i) inspect the books and records of the Association during normal business hours; (ii) receive an annual audited financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association; and (iii) written notice of all meetings of the Association and to designate a representative to attend all such meetings.

**Section 14.10** Notices to First Mortgagees. The Association shall furnish to the holder of any first Mortgage on any Lot or on the Common Area and/or on the Common Facilities, prompt notice of: (i) abandonment or termination of the Association or the planned

unit development; (ii) any material amendment to the Declaration, By-Laws, or Articles of Incorporation; (iii) the effectuation of any decision by the Association to terminate professional management, if any, and assume self-management of the Common Area, Common Facilities, and Development; (iv) any condemnation or eminent domain proceeding; and (v) any substantial damage to or destruction of any improvements located on any Lot or on the Common Area.

**Section 14.11** Superiority of Mortgage to Condemnation Proceeds. If any Lot, or portion thereof, or the Common Area and/or Common Facilities, or any portion thereof, is made the subject matter of any condemnation or eminent domain proceeding, the lien of any first Mortgage shall be prior and superior to the claims of the Owners of said Lots or Common Area and/or Common Facilities with respect to any distribution of the proceeds of any condemnation aware or settlement.

**Section 14.12** Superiority of Mortgage to Insurance Proceeds. In the event of any substantial damage to or destruction of the improvements on any Lot, or on any part of the Common Area and/or Common Facilities, the lien of any first Mortgage shall be prior and superior to the claims of the Owners of said improvements with respect to any distribution of any insurance proceeds relating to such damage or destruction.

## **ARTICLE XV NOTICES**

**Section 15.01** Mailing Addresses. Any communication or notice of any kind permitted or required herein shall be in writing and may be served, as an alternative to personal service, by mailing or electronically giving notice (with the consent of the Owner) of the same as follows:

If to any Owner: To the street address of the Owner's Lot or to such other address or email address as the Owner may from time to time designate in writing to the Association including by electronic transmission if the Owner has consented to such notice and such notice is allowed by law.

If to the Association: Oak Park Leisure Gardens, at the principal office of the Association (or to such other address as the Association may from time to time designate in writing to the Owners).

**Section 15.02** Personal Service on Co-Owners and Others. Personal service of a notice or demand to one of the Co-Owners of any Lot, to any general partner of a partnership which is the Owner of Record of the Lot, or to any officer or agent for service of process of a corporation which is the Owner of Record of the Lot, shall be deemed delivered to all such co-owners, to such partnership, or to such corporation, as the case may be.

**Section 15.03** Deposit in United States Mails. All notices and demands served by mail shall be by first-class or certified mail, with postage prepaid, and shall be deemed delivered four (4) days after deposit in the United States mail in the County.

**Section 15.04** Amendment of the Declaration, Generally. This Declaration may be amended or revoked in any respect on compliance with the following provisions:

(a) Member Approval Requirements. Any amendment shall be approved by the vote or assent by written ballot of the holders of at least sixty-six and two thirds percent (66 2/3%) of the Voting Power of the Members. Notwithstanding the foregoing, the percentage of the Voting Power necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause.

(b) Additional Approvals for Amendments to Particular Provisions:

(i) Mortgagee Approvals. Mortgagee approvals shall be required to amend any of the provisions described in Article XIV.

**Section 15.05** Restatements. This Section describes the methods for restating the Declaration after an amendment.

(a) General. The Board has the right, by resolution without the necessity of consent by the Owners, to restate this Declaration when it has been properly amended under its requirements for amendment. Such restatement shall be effective on execution of the restatement by any two officers of the Association and its Recordation. On Recordation of the restatement, the restatement shall supersede the prior declaration and its amendments in their entirety, without, however, affecting the priority of the Declaration in the chain of title to all properties that are subject to the Declaration as established by the Declaration's initial date of Recordation.

(b) Form of Restatement. The restatement shall restate the entire text of the original document, with these exceptions: (i) changes incorporating all amendments approved by the Owners; (ii) changes made to rearrange or delete the text for consistency with the approved amendments; (iii) changes made to delete material no longer legally effective or legally required, such as the provisions that are for the exclusive benefit of the Declarant; (iv) the addition of a statement that the Board has authorized the restatement under this section; (v) changes made to delete any provision declared illegal by constitutional or statutory enactment, by regulation, or by controlling judicial opinion; and (vi) changes needed to distinguish the restatement from the original document, such as Article, Section, or subparagraph numbering changes.

## **ARTICLE XVI GENERAL PROVISIONS**

**Section 16.01** Term. The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges, and equitable servitudes contained in this Declaration shall run with, and shall benefit and burden the Lots and the Common Area as herein provided, and shall inure to the benefit of and be binding on the Owners, the Association, its Board of Directors, and its officers and agents, and their respective successors in interest, for the term of sixty (60) years from the date of the Recording of this Declaration. After the expiration of the initial term, the term of this Declaration shall be automatically extended for successive periods of ten (10) years each unless, within six (6) months before the expiration of the initial sixty (60)-year term or any such ten (10)-year

extension period, a recordable written instrument, approved by Owners entitled to vote and holding at least a majority of the voting power of the Association terminating the effectiveness of this Declaration, is Recorded.

**Section 16.02**     Construction.

(a)     Restrictions Construed Together. All of the covenants, conditions, and restrictions of this Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Development as set forth in the Recitals of this Declaration. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision in a subsequent application or any other provision hereof.

(b)     Restrictions Severable. Notwithstanding the provisions of subparagraph (a), above, the covenants, conditions, and restrictions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

(c)     Singular Includes Plural. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine, or neuter shall each include the masculine, feminine and neuter, as the context requires.

(d)     Captions. All captions or titles used in this Declaration are intended solely for convenience of reference and shall not affect the interpretation or application of that which is set forth in any of the terms or provisions of the Declaration.

(e)     Exhibits. All exhibits to which reference is made herein are deemed to be incorporated herein by reference, whether or not actually attached.

(f)     References to State Statutes. Any references in this Declaration to State Statutes shall be to the referenced statute as in effect on the date that this Declaration is recorded in the Official Records of the County. In the event that any referenced statute is subsequently amended or superseded, all such references shall thereon mean and refer to the referenced statute as so amended, modified, or superseded, so long as the amended statute continues to regulate or pertain to the same subject matter.

OAK PARK LEISURE GARDENS HOME  
OWNERS ASSOCIATION,  
a California nonprofit mutual benefit corporation

Dated: 5-27-16

By: John E. Evers  
\_\_\_\_\_, President

Dated: 5-27-16

By: Andrew R. Smith  
\_\_\_\_\_, Secretary

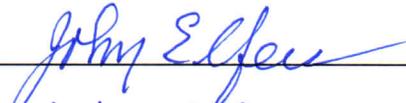
**CERTIFICATE OF PRESIDENT AND SECRETARY  
OF  
OAK PARK LEISURE GARDENS HOME OWNERS ASSOCIATION**

We, the undersigned, do hereby certify that:

1. We are the duly appointed and acting President and Secretary of Oak Park Leisure Gardens Home Owners Association (the "**Association**"), a California nonprofit mutual benefit corporation.

2. The foregoing *Amended and Restated Declaration of Covenants, Conditions and Restrictions for Oak Park Leisure Gardens Home Owners Association* (the "**Restated Declaration**") was approved by at least 51% of the total voting power of the Association and approved by the Superior Court of the County of San Luis Obispo pursuant to California Civil Code § 4275 on May 16, 2016, in accordance with the requirements of the Declaration (defined in the Restated Declaration) and the Davis-Stirling Common Interest Development Act. A true and correct copy of the Court's order is recorded herewith and incorporated herein.

IN WITNESS WHEREOF, we have executed this Certificate of President and Secretary this 27<sup>th</sup> day of May, 2016.

By:   
Name: John Elfers

Title: President

By:   
Name: Kenneth K. Arritt

Title: Secretary





**FILED**

**MAY 16 2016**

SAN LUIS OBISPO SUPERIOR COURT

BY A. Zanello  
A. Zanello, Deputy Clerk

1 Steven A. Roseman, Esq., SBN: 163966  
Sean D. Allen, Esq., SBN: 250922  
2 Jonathan N. Zweig, Esq., SBN: 285058  
ROSEMAN & ASSOCIATES, APC  
3 15250 Ventura Blvd., Suite 1102  
Sherman Oaks, CA 91403  
4 Tel. 818.380.6700  
Fax 818.380.6710

5 Attorneys for Petitioner, Oak Park Leisure Gardens Home Owners Association

6  
7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
8 **FOR THE COUNTY OF SAN LUIS OBISPO**

9 In the matter of OAK PARK LEISURE  
10 GARDENS HOMEOWNERS ASSOCIATION,  
11 a California nonprofit mutual benefit  
corporation,

12  
13 Petitioner.

Case No.: 16CV-0071

Assigned to the Hon. Barry T. LaBarbera  
Department: 2

**~~PROPOSED~~ ORDER GRANTING  
PETITION TO REDUCE REQUIRED  
VOTING PERCENTAGE TO AMEND  
CC&RS PURSUANT TO CAL. CIV. CODE  
SECTION 4275**

DATE: May 16, 2016  
TIME: 9:00AM  
DEPT: D2

14  
15  
16  
17  
18  
19  
20 Petitioner Oak Park Leisure Gardens Home Owners Association, a California nonprofit  
21 mutual benefit corporation ("Association"), filed a Petition for an order reducing the percentage  
22 of affirmative votes required to amend its Declaration of Covenants, Conditions and Restrictions  
23 ("CC&Rs"), and restating its CC&Rs pursuant to California Civil Code § 4275.

24 The Court, having reviewed the Petition by the Association, finds that the Petitioner has  
25 satisfied the requirements of Civil Code §4275 where:

- 26 1. The Association gave the required minimum 15 days written notice of the court  
27 hearing to its members;

1 2. Balloting on the Restated CC&Rs was conducted in accordance with all  
2 applicable provisions of its governing documents and the California Civil Code;

3 3. The Association made a reasonably diligent effort to permit and encourage all  
4 eligible members to vote on the Restated CC&Rs;

5 4. Owners having more than 50% of the votes, in a single class voting structure,  
6 voted in favor of the Restated CC&Rs;

7 5. The Restated CC&Rs are reasonable; and

8 6. The Petition is not improper for any reason stated in Civil Code §4275.

9 **Good cause appearing, IT IS ORDERED as follows:**

10 1. The Association's Petition to reduce the required voting percentage for approval  
11 of the Restated CC&Rs is granted and the Restated CC&Rs is deemed approved by the  
12 membership.

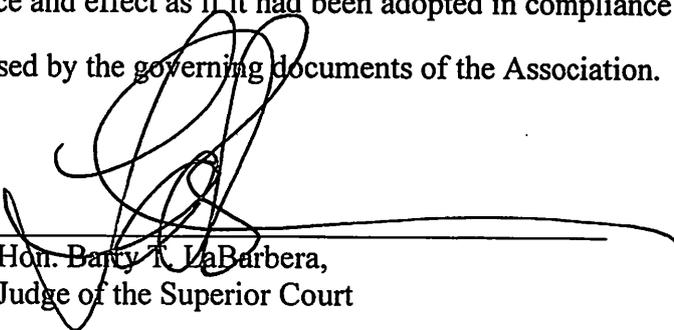
13 2. The Restated CC&Rs amend and replace the Declaration of Covenants,  
14 Conditions and Restrictions recorded on June 5, 1979, as Instrument Number 24813 of the  
15 Official Records of San Luis Obispo County, California.

16 3. Prior to recordation, true and correct copies of all exhibits to the Restated CC&Rs  
17 shall be attached.

18 4. The Restated CC&Rs shall not be effective until recorded in the Official Records  
19 in this County, together with a copy of this order. Within 60 days after its recordation, the  
20 Association shall mail a copy of the Restated CC&Rs to each member of the association,  
21 together with a statement that the Restated CC&Rs have been recorded. Upon such recordation,  
22 the Restated CC&Rs shall have the same force and effect as if it had been adopted in compliance  
23 with every requirement for amendment imposed by the governing documents of the Association.

24  
25 Date:

May 16 16

  
Hon. Barry T. JaBarbera,  
Judge of the Superior Court

I certify that this is a correct copy of the original on file with the Clerk of the Superior Court of California, County of San Luis Obispo. Attest my hand and seal of said court on  
(Date) MAY 16 2016  
*Michael Powell*  
MICHAEL POWELL, Court Executive Officer



Certification must be in purple ink to be a  
CERTIFIED COPY